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A MANUAL OF

RAL THEOLOGY

FOR

GLISH-SPEAKING COUNTRIES

BY

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ST. BEUNO'S COLLEGE, ST. ASAPH

I NOTES ON AMERICAN LEGISLATION BY

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Archbishop of N

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PREFACE

The object of the book which is herewith offered to the public is to present the common teaching of the Catholic moral theologians in an English dress. That common teaching is to be had in innumerable works written for the most part in Latin, but as far as I am aware there is no complete manual of moral theology in English. Yet that such a book will be found useful seems certain from the fact that works of the kind exist in abundance in other modern languages. In German we have Pruner, Probst, Linsenmann, and many others; in French, the well-known works of Gousset and Gaume; in Italian, Frassinetti; in Spanish, Villafuertes, Moran, and others. It may then confidently be expected that especially the ecclesiastical students and Catholic clergy of English-speaking countries will welcome a book intended chiefly for their benefit. The writer is not without hopes of its doing good even among non-Catholics. Among these the moral theology of the Catholic Church is little understood and constantly misrepresented and maligned. Of course it does not merit the bad reputation which Protestant and Jansenist slander has fastened on it. It is the product of centuries of labor bestowed by able and holy men on the practical problems of Christian ethics. Here, however, we must ask the reader to bear in mind that manuals of moral theology are technical works intended to help

the confessor and the parish priest in the discharge of their duties. They are as technical as the text-books of the lawyer and the doctor. They are not intended for edification, nor do they hold up a high ideal of Christian perfection for the imitation of the faithful. They deal with what is of obligation under pain of sin; they are books of moral pathology. They are necessary for the Catholic priest to enable him to administer the sacrament of Penance and to fulfil his other duties; they are intended to serve this purpose, and they should not be censured for not being what they were never intended to be. Ascetical and mystical literature which treats of the higher spiritual life is very abundant in the Catholic Church, and it should be consulted by those who desire to know the lofty ideals of life which the Catholic Church places before her children and encourages them to practise. Moral theology proposes to itself the humbler but still necessary task of defining what is right and what wrong in all the practical relations of the Christian life. This all, but more especially priests, should know. The first step on the right road of conduct is to avoid evil; in the doing of good each will act according to his vocation and opportunities, moved and stirred by the grace of God, who works in all as He wills.

THOMAS SLATER, S.J.

NOTICE TO THE READER

Rev. Michael Martin, S.J., the writer of the "Notes" incorporated in the text of this volume, was asked by the Publishers to add some references and notes on American legislation, which might render it more adapted to the United States. In doing so, he has confined himself to those points in which the ecclesiastical or civil laws of the United States differ from those of England. The reader need not expect to find an allusion to any other topic.

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BOOK I

HUMAN ACTS

CHAPTER I

WHAT IS A HUMAN ACT?

1. The Christian faith teaches that the end of human life is to know, love, and serve God. If a man fulfils this obligation faithfully till death, it further gives him the assured hope of eternal happiness with God in heaven. All our actions should be directed toward the end for which the whole man exists; if an action is such that it conduces to that end, it is a good, moral action; if, on the contrary, it does not conduce to that end, it is a bad, immoral action.

Not all man's actions, however, are capable of being invested with this moral quality. There are many actions of man which have no more moral quality than the growth of a tree in the garden or the running of a dog in the street. Good or bad digestion is an operation to a great extent removed from man's control; he is in general no more responsible for it than for the condition in which he was born. Or, if some immoral picture is suddenly thrust under his eyes, he cannot help seeing it. Such acts are neither moral nor immoral; they are neither capable of conducing to the end of moral human action, nor of diverting the agent from it; they merit neither praise nor blame.

2. A man is a good man morally if he perform good actions over which he has control; he is a if he wilfully performs bad actions. So that t over which a man has control, the actions whicl performs, are alone capable of making him a goo man; they are the only actions of man which ha quality; they alone are treated of in moral the is the task of moral theology to frame rules for h duct according to the teaching of the Catholic C decide what actions are good and what bad ac the principles of the Christian faith.

3. The actions over which a man has contro special sense called human acts, because they a his free choice. That man has the power of fr or free will, is clearly taught in Holy Scripture dogma of faith.[1] It is also a truth of sound ph vouched for by the consciousness of each indiv by the common sense of mankind. It does not our province to prove the doctrine. We suppos any rate in many of his daily actions, when all ditions requisite for action are present, a man is f or not, to perform this action rather than that man must indeed have a motive for action, but th does not constrain him to act; if he has the use trol of his reason, he may as long as he is in life p abstain from the action proposed to him. Ma wonderful power, unique in all the visible cr directing his mental and bodily activity in thi that according to his good pleasure; and it is thi ful power which makes him a moral agent, a

[1] Ecclus. xxxi. 10; Trent. sess. 6, can. 5, 6.
[2] M. Maher, Psychology, p. 394, 5th ed.

makes it worth while to discuss and formulate rules of human conduct. Man himself is the cause of his human acts; he freely directs them to the end of human existence, or to some perverse end of his own choice.

4. This power of free choice is a property of the rational will, and is the natural complement of the deliberative reason with which man is also endowed. For among the various objects offered to the will's acceptance, the reason can propose motives for the selection of one object rather than of another, and, at any rate in many actions, until the deliberation is finished, the will need not decide between them. If an object capable of satisfying all our desires were presented to us, there would indeed be no room for deliberation; as Dante expresses it:

> Such one becomes, admiring that blest Ray,
> That, whatsoever else allure the sight,
> Impossible it is to turn away;
> Because the one sole wished-for Good is there,
> And everything defective elsewhere found,
> In it is perfected beyond compare.
> Paradiso, 33, 100. Wright's translation.

In the presence of such an object, the whole man, with all the vehemence of his will made for good, would rush into the embrace of his God. For God alone is capable of wholly satisfying all man's desires. Or again, if some object of ardent natural desire were suddenly thrust upon us, leaving no time for deliberation, overwhelming us with the idea of its power to satisfy our appetite, it might be that no room was left for free choice, that we should be necessitated to action. There would be at least some indeliberate motion toward the object, a movement of the will which divines call *motus primo-primus*. If in such a case the power of deliberation is not altogether smothered, but

is exercised though imperfectly, the movement of the will which follows is called *secundo-primus*. If the power of deliberation is wholly wanting, the act which follows cannot be sinful, however wrong objectively; if the act is semi-deliberate, however grievously wrong in itself, it will be imputed to the agent only as a more or less serious venial sin.[1]

These principles are of great importance for forming an estimate of the moral guilt of children, of habitual drunkards, of persons long habituated to sins of the flesh, and persons with weak intellect.

It follows from what has been said that previous knowledge of, and deliberation about, the object proposed by the intellect to the will, is necessary to free and moral action, which is defined by divines to be action which proceeds from man's deliberative will.[2]

5. Human acts are by theologians divided into various classes:

a. Internal acts are performed by the internal powers of the soul; *external*, by the bodily organs.

b. Elicited acts are such as proceed immediately from the will and are performed by it alone. They are usually said to be six in number; three having reference to the end, and three others to the means for the attaining of the end. A *wish* is a simple inclination of the will, or an ineffectual desire of an object; an *intention* is a firm resolve to attain an object by the use of the appropriate means; *fruition* is a peaceful delight in the possession, real or imagined, of a loved object. The act of selection between various means to an end is called *choice;* if no alternative is offered by the intellect, acceptance of the means by the will is called

[1] St. Thomas, 1–2, q. 77, a. 7. [2] St. Thomas, 1–2, q. 1, a. 1.

consent, though this term is more commonly used of every act of acceptance by the will of an object proposed to it; *use* or *execution* is said of the act of the will which applies the means chosen to the obtaining of the end proposed.

Commanded acts are executed by other faculties than the will by which they are commanded.

c. Natural acts are performed by man's faculties unaided by divine grace; *supernatural,* by the help of God's grace.

d. Good actions are conformed to the rules of morality; *bad* actions are contrary to them; those that are *indifferent* may be good or bad according to circumstances.

e. Valid acts are such as have all the conditions requisite, and so produce their effect; *invalid* acts are destitute of some condition necessary to produce their effect.

CHAPTER II

VOLUNTARY ACTS

1. HUMAN acts, the subject-matter of Moral Theology, are also called voluntary acts to distinguish them from such actions as are produced under external compulsion. For voluntary acts are the effect of an internal principle, the will (*voluntas*). The term, however, is ordinarily used not of all actions which are produced by an internal principle, for some of these are specially denominated *spontaneous* or *reflex* actions. These latter are the immediate result of sense excitation without the intervention of consciousness. Thus the eyelid closes to protect the threatened organ, and the hand rises involuntarily to drive off a troublesome fly. Voluntary in the strict sense is used only of actions produced by the will with rational knowledge of, and inclination toward, the object. Voluntary actions are produced with consciousness and deliberation. Thus, practically and in the concrete, voluntary actions are identical with human acts, though their connotation is different. For human acts connote freedom, as we have seen, while an act may be voluntary and yet not free. The beatific vision by which the blessed see God face to face, and are thereby thrilled with ineffable delight, is a voluntary act; it proceeds from the will with full and clear knowledge of God, but it is not free; the blessed cannot avert their gaze from

the Infinite Beauty which enraptures every fiber of their being. However, all voluntary acts of man in this life are free, and so, for the purposes of moral theology, human acts and voluntary acts are interchangeable terms.

2. An act may be voluntary in various ways:

a. An act is *perfectly* voluntary if it proceeds from the will with full knowledge and deliberation; if the knowledge and deliberation are not full the act is *imperfectly* voluntary.

b. Simply or *absolutely* voluntary is distinguished from voluntary *under a certain respect,* or *secundum quid.* More commonly an action which under the circumstances is willed, but which would not be willed if the circumstances were different, is said to be *simply* or *absolutely* voluntary; while inasmuch as the same action would not be willed if the circumstances were different, it may also be said to be only voluntary *under a certain respect.* Thus, to take the well-worn example, the merchant is willing in a storm that his goods should be thrown overboard to save the ship, the action is *simply* voluntary; he would not will it unless the ship were in danger, so that it is also voluntary only *under a certain respect.*

c. An action is said to be voluntary *in itself* when it is in itself and by itself the object of the will; if it is merely the effect of something else which is willed, it is then called voluntary *in something else,* or voluntary *in the cause.*

Frequently *directly* and *indirectly* voluntary are used in the same sense as voluntary in itself and voluntary in the cause.

3. All voluntary action is imputed to the agent for praise or blame, merit or demerit; for the action is free, as we have seen, and proceeds from a positive inclination of the will. This inclination of the will is an important element

in voluntary actions: the absence of it prevents the sin of man being imputed to God as voluntary, and the same principle sometimes justifies us in performing an action which is right in itself, though some of its effects are evil. But this is an important point and requires fuller treatment.

First of all then, let us see what is required before an evil effect of my action can justly be imputed to me and make me morally guilty.

a. The evil effect must in some measure be foreseen, otherwise it will be involuntary and not imputable. And so no moral blame attaches to a man who, thinking that he is drinking water, swallows poison.

b. The agent must be able to prevent the evil effect, for we are only responsible for what is under our control. The engine-driver of an express train is not responsible for the death of a person who suddenly throws himself under the wheels of the engine.

c. There must be an obligation not to perform the action by reason of the evil effect which would follow from it. If the evil effect follows merely by accident, it does not render an otherwise lawful action unlawful, and I am not bound to abstain from it on account of the mere possibility of the evil effect following from it. Thus, if a hundred people indulge in hunting or motoring for a considerable time, some one of them is morally certain to meet with an accident endangering life or limb. But this does not make hunting or motoring morally wrong. Though I am conscious that the accident may happen to me, I may nevertheless hunt or use the motor car as usual. If I kill myself or some one else, it will be merely by accident, for it is presumed that I use reasonable care to avoid mishap.

On the other hand, a superior, whose commands I am bound to obey, may have used his authority to forbid an action on account of the possible evil effect which may follow therefrom. In that case I must abstain from the action by reason of the command of my superior, though otherwise I should be free. And so if a father, for special reasons, forbids his son to go to the theater, the son should obey, as long as he is subject to parental authority. Again, even though there may be no positive command of a superior, in cases where no good would come from the action, and where the only effects would be evil, I am bound to abstain from the action, which in that case itself becomes evil. Similarly, where the evil effects are largely in excess of the good, right reason tells me that I must abstain from the action. But there are many actions which are forbidden by no lawful authority, which have both good and evil effects, while it is not clear that the latter largely outweigh the former. Am I bound to abstain from such actions? or when am I bound to abstain from them?

4. In order to provide a general rule of conduct in such circumstances, divines have formulated what is known as the principle of a double effect. That principle may be enunciated as follows:

It is lawful to perform an action which produces two effects, one good, the other bad, provided that (1) the action, viewed in itself, is good, or at least, indifferent; (2) the agent does not intend the evil effect, but only the good; (3) the good effect is produced as immediately as — that is, not by means of — the bad; and (4) there is a sufficiently weighty reason for permitting the evil effect.

This rule will furnish us with a guide in case of doubt whether we are bound to abstain from any given action

because of some evil effect which will follow from it. We shall be at liberty to perform the action in question provided that four conditions are realized. In the first place, the action itself, apart from the evil effect, must not be bad. If it is bad in itself, there can be no question about its lawfulness. Further, the agent must not intend the evil effect, though he foresees that it will follow. If he intends it, the evil effect becomes voluntary in itself and imputable to the agent. Then, the good effect must not be the result of the bad, for we must not do evil that good may come; the end does not justify the means.[1] Lastly, there must be such a proportion between the good and bad effects that right reason tells me that I am not forbidden to forego the good effect of the action on account of the bad being inextricably bound up with it.

The question as to whether a general is justified in ordering his army to take a stronghold by assault in war will serve to illustrate the principle and its use. In the first place, the assault must be justified by itself, apart from the cost in human life. The assault will be justified in itself if the war is just and the stronghold belongs to the enemy; it will not be justified if the war is one of unjust aggression, or if the general has been expressly ordered by his government not to take the place. Moreover, the general must not directly intend the necessary loss of life among the innocent non-belligerents. He foresees and deplores it; he is said in the technical language of theology to *permit* the evil effect, not to *intend* it. The slaughter of innocent non-belligerents must not be the means chosen to capture the stronghold; evil may not be done that good may come. Finally, the capture of the

[1] Rom. iii. 8.

place must be a matter of sufficient importance in the war to warrant the shedding of innocent blood in the bombardment, and the other evils necessarily entailed in an assault. The question as to when the good result is sufficient to outweigh the evil is largely a matter of sound judgment after a careful examination of all the circumstances. If the successful storming of the place would only add to the personal reputation of the general without bringing the end of the war any the nearer, the assault would be a crime; if it would compel the enemy to sue for peace, it would usually be justified.

This principle is of great importance in moral theology; it has in its support the common consent of divines, and is expressly used by St. Thomas.[1]

5. If I am not justified, according to the foregoing principle, in performing an action which causes some evil effect, that evil effect is imputable to me though I did not intend it in itself; it is not indeed voluntary in itself, but it is voluntary in its cause, and I am bound to avoid evil even though only voluntary in its cause.

When, however, evil is not voluntary in itself, but only voluntary in its cause, a question arises concerning the degree of moral guilt which is contracted when such a cause of evil is posited unwarrantably. The case arises especially when grave evil is the result of an action which in itself is only venially sinful, as when grave harm is the result of slight negligence. Of course, great evil arising from grave negligence is seriously sinful even though only voluntary in the cause; and so a doctor, who through grave negligence kills his patient, is guilty of a great sin, though he did not intend the homicide. But supposing

[1] Summa, 2-2, q. 64, a. 7.

that in passing through a gate in the country I leave it open, owing to slight negligence, and in consequence a neighbor's crop is seriously damaged by his cows getting among the corn; do I commit a grave sin in that case? Of course, if owing to the circumstances I clearly foresaw that the damage was certain to follow and I could easily have closed the gate if I chose, I certainly sin grievously in not closing it; the negligence is then grave. But our case supposes circumstances to be such that the negligence is only slight, partly on account of the uncertainty of harm following, partly because I had frequently seen the gate standing open, and for other reasons. Will the neglect to close the gate after me in such circumstances be grievously sinful on account of the serious harm to my neighbor which was the consequence? The answer must be "No." For the harm did not follow necessarily and exclusively from my neglect; my action was not the immediate and necessary cause of the damage done to the crop; other agents intervened; my action was only slightly responsible for what followed. Inasmuch, then, as the malice of the cause is only slight, and this alone is voluntary in itself, the evil effect which is only voluntary in the cause will be imputed only as a venial sin.

6. Theologians dispute about the question whether such a sin of omission as is committed by not closing the gate after me, with resulting loss to my neighbor, can be committed without a special act, by simply neglecting to put the act which was of obligation.

The question is not a very practical one; it will be sufficient to say in reply that physically a man who adverts to the obligation of doing something may hold himself neutral, and so sin by omission without doing anything;

practically, however, in such cases, a positive determination is formed not to perform the duty, or at least to perform something else which is foreseen to be an obstacle to the performance of the duty.[1]

7. The question sometimes arises at what time a sin of omission or a sin which is voluntary only in the cause is committed. When a man gets drunk on the Saturday evening and foresees that in consequence he will not be able to attend Mass on the following day, is the sin of omitting to hear Mass committed on the Saturday night, when he voluntarily posits the cause of his not hearing Mass on the following day, or on the Sunday, when Mass is not heard as is of obligation? Inasmuch as a formal sin is a human act, it would seem that we must say with St. Alphonsus[2] that the sin is committed when the cause of the omission or of the evil is voluntarily posited, otherwise we should have to say that a man may commit sin without knowing it, or while he is asleep.

[1] Suarez, tract. 5, d. 3, sec. 2, n. 6.
[2] Theol. Mor. lib. 5, n. 10.

CHAPTER III

OBSTACLES TO VOLUNTARY ACTION

We have seen that we are responsible only for those actions which are performed with knowledge or advertence, and freedom of choice. Whatever tends to prevent or lessen advertence, or to restrict liberty, will tend to diminish our responsibility. Ignorance affects advertence, fear and violence influence freedom of choice, and concupiscence influences both. Something must now be said on each of these causes which affect the voluntariness and imputability of our actions.

Section I

On Ignorance

1. Ignorance is the absence of knowledge which the person who is ignorant should have. It is thus distinguished from *nescience*, which is merely the absence of knowledge, without the implication that the knowledge should be possessed.

Ignorance must also be carefully distinguished from *error* or *mistake*, which is a false judgment concerning something. Thus, if I simply do not know the person to whom I am speaking, I am in ignorance of his identity; if I mistake him for some one else, I am in error.

2. *a.* With reference to the subject who is ignorant, ignorance is either *invincible* or *vincible.*

Invincible ignorance cannot be dispelled by the use of ordinary diligence. This may arise in my mind either because no thought of my want of knowledge occurs to me, and so the idea of making inquiries never enters into my head, or because I have failed to acquire knowledge on the point, though I made all reasonable efforts to do so. What efforts should be made in any given case depends on the character and circumstances of the person, and the matter on which he is ignorant. If the matter is of great importance, if it affects the salvation of souls, or the spiritual and temporal welfare of large numbers, great efforts must be made to dissipate ignorance; the efforts which would be sufficient in the case of one poorly instructed, or very much occupied with other weighty affairs, would not be sufficient in other cases where these suppositions are not verified. In general, where knowledge is of obligation those efforts must be made to acquire it which ordinarily prudent and good men would exert in the circumstances.

Vincible ignorance is such as can be removed by the use of the requisite diligence. Various degrees are distinguished by divines according as some, or little, or no diligence is exercised to dispel it, or means are used to foster it. If means are used to foster it, the ignorance is called *affected;* if little or no diligence is used to dispel it, it is called *crass,* or *supine;* if some diligence is used but not what is required in the case, it is called *simply vincible* ignorance.

b. With reference to the object of ignorance, we must distinguish ignorance of *law, fact,* and *penalty.* There

is ignorance of law, if the law's existence is not known, as when a Catholic does not know that the Church forbids marriage within the fourth degree of kindred. There would be ignorance of fact, if it were not known that A. B. is related to C. D. within the fourth degree. Ignorance of the penalty is distinguished from ignorance of law when some special sanction is not known, though the law itself is known.

c. With reference to the action of the subject, we distinguish *antecedent*, *consequent*, and *concomitant* ignorance. Antecedent ignorance is not voluntary, it is not willed by the subject; consequent ignorance is voluntary; concomitant is not expressly willed, but the action which is done with concomitant ignorance would *ex hypothesi* be done, even if the ignorance did not exist.

3. Invincible ignorance, as defined above, excuses from fault, so that, however bad an action vincible ignorance may be, it cannot be The reason is obvious; there is no knowledge of the malice of the action, and so the bad voluntary, and not imputable.[1]

4. Vincible ignorance of the malice of the cannot excuse one who does wrong. He doe will the evil in itself, but he wills its cause, voluntary in its cause and imputable. A sins in simply vincible ignorance, or even in cr is indeed less blameworthy than one who knowledge of the malice of his act; the si perfectly voluntary, and less imputable tha voluntary. There is an apparent differen among theologians as to whether affected

[1] Prop. 2 damn. ab Alex. viii; 68 inter Ba

creases or lessens the malice of a wrong action. With many modern authors it seems best to distinguish the motive with which in each case ignorance is fostered. If the state of ignorance is fostered through fear of being compelled by knowledge to abstain from the sinful act, such affected ignorance would seem to lessen the malice of the sin; the wrongdoer would not in this case venture to sin if he had full knowledge, and so he fosters his ignorance; his will is less malicious than if he sinned with full deliberation and consent. If, on the contrary, he merely fosters his ignorance to be able to plead it in excuse, and he is so bent on sinning that he would do the act in the same way even if he had full knowledge of its malice, then it does not seem to diminish the sin; it is rather a sign of an absolute determination to commit the sin.[1]

We saw in a former chapter that the degree of malice which attaches to a sin committed in more or less culpable ignorance is measured rather by the sinfulness of the neglect to put away the ignorance, than by the sinfulness of the act in itself.

5. Ignorance itself of what we are bound to know, as of the obligations of our state of life, of the truths of faith which are necessary to salvation, is sinful if consequent and vincible; antecedent and invincible ignorance is of course not sinful.

6. Ignorance does not render an act invalid which has all other requisites for its validity; and so baptism conferred by one who knows nothing about its effects will be valid, if the matter and form are correctly applied with the intention of doing what the Church does. Substantial error or mistake about the person with whom marriage

[1] Bucceroni, 1, n. 51.

is contracted will invalidate the contract, while ignorance of who the person is will not, if there be the will to marry.

Section II

On Concupiscence

1. In theology concupiscence is used in two distinct senses. It frequently signifies the inclination to evil, which in human nature is a result of the fall of our first parents. In this sense it is called sin by the Apostle.[1] Without any moral or immoral implication the word is used here to denote any passion, or any movement of the sensitive appetite towards its proper object. It comprehends therefore any movement of love, desire, or hatred, sorrow, anger, or delight.

2. Concupiscence is *antecedent* or *consequent*. The former precedes any action of the will, and so is involuntary. The latter is voluntary, either because it is deliberately and directly excited by the will, or at any rate willed in its cause.

3. Antecedent concupiscence lessens the malice of an evil action which is done under its impulse. For concupiscence troubles the intellect, so that it cannot dispassionately weigh the moral quality of the object proposed to the will and the motives for rejecting it; moreover, concupiscence paints the object in more than naturally attractive colors, so that it exerts an undue influence on the will. Concupiscence thus disturbs the indifference of the will and renders the act which follows less voluntary and free. It is accordingly less imputable to the agent.

[1] Trent. sess. 5, de pec. orig.

It sometimes happens that antecedent concupiscence renders the subsequent action involuntary, and so in no wise imputable, however wrong it may be. This will be the case when some sudden onslaught of passion deprives the agent of the use of reason and blindly impels him to evil. Strong passions, such as love or anger, especially in impressionable natures, sometimes produce this result, and even when murder or suicide is committed in such circumstances juries are warranted in bringing in a merciful verdict of murder or suicide while temporarily insane. If, however, the passion was not altogether antecedent, but in the early stages of its onslaught there was room for deliberation, the consequent evil will not be altogether involuntary; it will to some extent be voluntary in its cause at least.[1]

It used to be a matter of dispute among theologians whether a man could be insane and not responsible for his actions in some one category, while he retained his self-control in others. In our days it will hardly be disputed that monomania exists, and if it exists, as, for example, in the matter of intoxicating drink, the monomaniac will not be directly responsible for his actions done under the influence of his madness, although he may be responsible for them in their cause.[2]

[1] St. Thomas, 1–2, q. 77, a. 7.

[2] Similarly, those who suffer from illusions may be so demented on the particular point as not to be responsible for actions which they perform under the influence of their illusion. It is a question of fact when this is the case, a fact which it is difficult even for experts to determine.

Natural propensities to evil arising from hereditary taint or from temperament lessen the voluntariness of the action just as passion does, but they are not as a rule so strong as to make what in itself is mortally sinful only venial. The struggle against vice is more diffi-

4. Consequent concupiscence increases the malice of a bad action if it is wilfully excited, because the tendency of the will to evil is voluntarily made more intense. If the passion is voluntary only in its cause, it is rather a sign of the great intensity of the perverse will from which it flows, but which it does not cause.

5. The evil motions of anger, impurity, rash judgment which precede all advertence and deliberation of the mind, cannot of course be sinful, as they are not voluntary. They become sinful when consent is yielded to them after advertence to their malice. The question is discussed among theologians, whether it be sinful, and in what degree, to remain neutral under an evil motion of concupiscence, neither giving consent to it, nor positively resisting it. If the question is raised concerning a vehement temptation to impurity, it may reasonably be denied that it is ordinarily possible to remain neutral; the danger of consenting would be too great. In such a case there will

cult for those who are subject to such propensities, but as long as they are in their right senses with the help of God's grace they can resist, if only they take the necessary means. The same must be said of those who have strengthened their passions and weakened their will by long indulgence in a habit of sin. V. Frins. De Act. Hum. 1, n. 236.

"There is not, and there never has been, a person who labors under partial delusion only, and is not in other respects insane." C. Mercier, Criminal Responsibility, 1905, p. 174.

However, on p. 203 the same author writes: "The majority of insane persons are sane in a considerable proportion of their conduct; and when in this part of their conduct, they commit offenses, they are rightly punishable." Perhaps the explanation of this apparent contradiction lies in a sentence which immediately follows the last. It is this: "Since the limits, between the sane and the insane areas of conduct of insane persons, are ill defined, no insane person should be punished with the same severity that would be awarded to a sane person for the same offense."

usually be a grave obligation to resist positively for fear of being drawn into giving consent. Positive resistance does not mean direct and physical effort, which would be worse than useless; but it means that we must, under temptation, avert our minds from the evil suggestion, and occupy them with other thoughts. If, however, the question be put, whether sin is committed by remaining neutral under temptation to evil, not deliberating about committing it, but simply neither consenting to it nor rejecting it, the correct answer would seem to be that a venial but not a mortal sin is thereby committed. There is some sin, because we are commanded to rule the lower appetites and keep them in subjection to reason, which is not done in the case supposed. But the sin cannot be mortal, for there is no consent of the will, by which alone mortal sin can be committed. This is the teaching of St. Thomas and of St. Alphonsus.[1]

Section III

On Fear

1. Fear is defined to be a perturbation of the mind on account of some present or future danger.

It is *grave* or *slight* in proportion as the danger is serious or not serious. *Absolutely* grave fear is such as will seriously affect an ordinarily constant man, as the fear of death, of perpetual imprisonment, or of loss of goods; *relatively* grave is such as will seriously affect any one of timid disposition.

Reverential fear is that which a subject feels lest he

[1] Theol. Mor. 5, n. 6.

should offend his superior. Ordinarily, divines rank it as slight fear, but it may become grave if, for example, a very austere father threaten his daughter with loss of home or with his perpetual displeasure.

Fear *from without* is the result of some external danger, which may arise either from a necessary cause, as, *e.g.*, from the danger of shipwreck; or it may be threatening from a free agent. Fear *from within* is from an internal cause, as the fear of death from a disease which has been contracted.

2. The actions which are done out of fear are simply voluntary, but they are usually also involuntary under a certain respect.

There is no question here of actions which are done *in* fear or *with* fear, as when I walk with fear and trembling along a lonely road by night. We are concerned with the effect which fear has on human actions done in consequence of fear; and unless it deprives the agent of the use of reason, which in rare cases may happen, the action remains voluntary, because it is done freely and deliberately to avoid the threatened danger. In such circumstances, as we saw above, the action is said to be simply voluntary; but it is also involuntary under a certain respect, for, unless the danger threatened, the action would not be done. An exception must be made with regard to attrition elicited from fear of hell, which, if it is to be efficacious, must be simply voluntary and in no respect involuntary, for otherwise it would not help to justify the sinner in the sacrament of Penance.[1] We can easily see how this is possible with regard to sin. For other actions done through fear have some evil or loss annexed to them, on which

[1] Trent. sess. 14, c. 4.

account they are involuntary under some respect; while aversion from sin is wholly good and reasonable, and so there is no reason why repentance for sin from fear of hell should not be simply voluntary, and in no respect involuntary.[1]

3. Inasmuch as bad actions done through fear are simply voluntary, it would follow that they are imputable to the agent, so that fear does not excuse him from sin. And this is true of such actions as are intrinsically bad and against the natural law. The Church has always considered those to be apostates who through fear of death or persecution deny their faith, though less culpable than those who renounce it without excuse.

However, with regard to positive precepts, grave fear ordinarily excuses transgressors of them from sin. The reason is, because the legislator is not presumed to desire that his laws should bind when their observance would entail such grave consequences to his subjects. Divines, relying on what we read in Holy Scripture, teach this doctrine concerning the positive law of God, and it will be all the more true of positive human legislation.[2] But if non-observance of a law or a command of a superior would cause great damage to the common good, then the law or command must be obeyed, even with loss of life; for private advantage must yield to the requirements of the common weal. And so a soldier must stick to his post in war, even at the risk of life.

[1] St. Alphonsus, 6, n. 442.

[2] St. Thomas, 3, q. 40, a. 4, ad 3; 1–2, q. 100, a. 8, ad 4; Suarez, De Leg. 3, c. 30, n. 6.

Section IV

On Violence

1. Violence or coaction is the using of greater force than can be resisted to compel another to perform some action against his will. In certain connections the person who suffers violence is said in English law to be under *duress*.

It follows from the definition that violence is from something external to the agent; no one can offer violence to himself; and that the subject resists to the utmost of his power. If the resistance is only partial, there is violence, only under a certain respect (*secundum quid*).

2. The elicited acts of the will cannot be forced by violence, for in that case the agent would will and not will at the same time.

3. The other internal faculties, and much more the external faculties of man, may be subject to violence. If the violence is absolute, the resulting action is involuntary and not imputable to him who suffers violence; if the resistance is only partial, the action will be voluntary to a certain extent, and in the same degree it will be imputable to the agent.

CHAPTER IV

THE MORALITY OF HUMAN ACTS

SECTION I

On the Essence of Morality

1. BY PERFORMING good actions a man becomes a good man morally, and he is a bad man morally if he performs bad actions. Actions are called good or bad morally with reference to the norm or rule of human conduct. So that the morality of an action is its relation to the rule of human conduct. It will be a morally good action if it be conformed to the rule of conduct; otherwise it will be a morally bad action. As men have differed, and do differ, widely in their views as to the meaning of human life and as to man's destiny, they naturally have differed, and do differ, widely in deciding what is the rule of human conduct. The rule of evolutionary ethics will be the survival of the fittest; in other systems it will be progress, or the greatest happiness of the greatest number, or pleasure, or the categorical imperative of the individual reason. Even among Catholic philosophers and divines there is some difference of opinion as to what constitutes the fundamental norm of morality. Practically the different opinions come to much the same, especially as there is greater agreement among Catholics as to what are the

formal and proximate rules of morality. The teaching of St. Thomas and many others seems to be that the fundamental norm of morality is rational human nature as such. Good in general is that which is conformable to the being whose good it is; and so morally good actions will be such as are conformable to the rational nature of man considered in itself and in all its relations. Man's intellect can know man himself, the existence of God and our relation to Him, our relations to other human beings, and to the world round about us; knowing these things, our reason can tell us what actions are becoming and what unbecoming to such a nature. Moreover, reason tells us that although we have the physical liberty to do wrong, we are nevertheless under a moral obligation to abstain from it. Our most wise, and good, and provident Creator, who has given us our nature and placed us in the position which we hold, cannot be indifferent as to the manner in which we conduct ourselves. The still, small voice of conscience is there to tell us what is right, in the name of God whose herald it is, to approve of what we do well, to condemn what we do ill. The fundamental norm of right conduct then is man's moral nature; morally right conduct is conduct in conformity with man's nature in itself and in all its relations. This constitutes right order in the moral world, which God the Creator and provident Ruler of the universe cannot but will us to observe, and this divine Will or Reason bidding us to observe right order and prohibiting its violation is the eternal law of God, the formal objective rule of morality. Human reason, applied to conduct, or conscience, is the formal subjective rule which makes known to us and applies the objective rule.[1]

[1] V. Frins. De Act. Hum. 2, n. 65.

2. The morality of a human act belongs to it inasmuch as it issues freely from the will with knowledge of its moral quality. Because it is the free product of the human will, a human or a moral act makes a man culpable or praiseworthy. Now the will alone is free, and so morality belongs properly to the internal act of the will. In a perfect human action indeed, the external act must follow, if it is in the agent's power, in order to the completeness and perfection of the internal act; otherwise there will be no perfect and efficacious will. But the external act, which is called free only with reference to the will from which it proceeds, cannot have any separate morality of its own, nor of itself can it add to the morality of the internal act. In a complete human act, therefore, consisting of an internal and external action, morality is formally in the internal act alone. Accidentally, on account of longer duration, or repetition, or greater intensity which the external act causes, it may add something to the goodness or malice of the internal act, but not in and by itself. A man is good or bad as his will is good or bad.

From this it must not be concluded that an external sin is the same as an internal sin; that if a man has committed fornication, it is sufficient to confess the desire and intention to do so; the malice of the internal and external acts are the same substantially, but an internal act is different from an external act; and so the sins also differ, for sin is a bad human act.

3. There is considerable difference of opinion as to whether, besides the division into good and bad actions, we must also admit a third class, neither good nor bad, but indifferent. In the abstract, indifferent actions certainly exist; to take a walk, for example, in itself and in

the abstract, is neither a good nor a bad action. But in the concrete, a man's intention, and the circumstances in which the action is performed, necessarily give it a moral quality. The intention must be honest or not, the circumstances must be such as to make the action conformable to right reason or not, and so in the concrete any particular action must be either right or wrong; it must be either good or bad, it cannot be indifferent. An action may of course be morally good, and yet not supernaturally meritorious, and so indifferent from a supernatural point of view; and this perhaps is the meaning of some of those divines who contradict the above teaching of St. Thomas and the common opinion of the schools.[1]

4. An action which in itself is not conformable to right reason and order, is against the law of nature and intrinsically bad. An action which in itself is not bad, but only bad because forbidden for good reasons by a lawful authority, as eating flesh meat on a day of abstinence, is said to be bad because forbidden; while intrinsically bad actions are forbidden by God because they are bad and inordinate. However, not all these intrinsically bad actions are bad in the same degree. Some are necessarily and always so, because in all circumstances they remain inordinate, as hatred of God, our first beginning and last end. Others in certain circumstances may become lawful, as taking what belongs to another, which in certain circumstances may be done without sin. The State for good reason may grant leave to take another's land for a new railway; and *a fortiori* almighty God, the supreme Lord of all created things, may, without doing an injury, take the life, rights, or property of His creatures. Many

[1] St. Thomas, 1–2, q. 18, a. 9.

divines explain the spoliation of the Egyptians, and the divine toleration of polygamy in the Old Law, by the aid of this principle.

Finally, some actions, as obscene touches and looks, are commonly inordinate and sinful; but if there is good reason for them, and due caution be exercised, they become lawful.[1]

Section II

The Sources of Morality

We saw in the preceding section that there are various rules by which we know whether a human action is good or bad. It will be a good action if it be conformable to right order, otherwise it will be a bad action. It remains for us to consider what elements in an action make it conformable or not with right order. What have we to attend to in order to know whether an action is according to right reason or not?

There are three such elements, of which sometimes one, sometimes another, sometimes all together, contribute to make the actions in right order or on the contrary inordinate. They are the *object*, the *end*, and the *circumstances* of the action.

Point I

The Object

1. By the object is here meant that to which the will primarily and directly tends; that which it determines to do looked at in itself, apart from the circumstances with which the action when done will be clothed; or it is the action considered in the abstract.

[1] Gury, 1, n. 26.

2. It is obvious that some objects, in the sense above defined, have an objective morality of their own, and this causes the will which tends towards them to be either good or bad as the object is good or bad. To blaspheme God is an action which no creature of His can will without the greatest inordinateness. The will to commit murder, or to steal another's property, is essentially an evil will, because it tends to an evil object. On the contrary, to love God, to relieve human misery, to show love, honor, and reverence to one's parents, are good actions, because these objects are good, and the will that tends to them is good.

Human actions, then, derive their specific morality from the object, whenever that object is of itself conformable to rational human nature, or, on the contrary, not conformable to it. If the object is indifferent, without any objective moral quality, as walking, the action will derive its morality from the circumstances in which the action is performed.

Point II

The End

1. By the end is here understood the reason or motive which induces the agent to act.

The end of all human life is called the *last* end; other motives for action are *intermediate* ends. An end is *primary* if it holds the first place among several, and would be sufficient by itself to induce action; otherwise it is *secondary*.

2. It is obvious that the end or motive which induces the agent to act holds a very prominent place among the sources of the morality of an action. For it is the object

to which the will tends, the prospect of gaining which moves the agent to act; but, as we saw in the last point, the motion of the will takes its moral quality from the object; a will then which tends to a good end will so far be good; a will which tends to a bad end will be bad. But the morality of an action resides chiefly in the will, so that a good or bad will, derived from the motive of an action, must necessarily contribute to the goodness or badness of that action. It is the end or motive which sets the will in motion and gives its own moral quality to the action which follows. One then who steals money in order to be able to commit adultery commits a sin against justice, induced thereto by a desire to sin against chastity, and as St. Thomas, following Aristotle, says, he is more of an adulterer than a thief.[1]

3. The end which the agent has in view may coincide with the natural scope of the action, as when a man eats to support life. The *extrinsic* end is then said to correspond with the *intrinsic* end of the object. Or it may be different, as when a man eats merely for the sake of pleasure; and a man may be moved to action by a variety of subordinate ends, as when he eats to keep up his strength, to be able to work, to obtain the money wherewith to be able to support his family, and so fulfil his duty.

4. If the object of the action be good, and the extrinsic end of the agent be good also, the action will have a twofold merit. And so there is a twofold merit in giving an alms to relieve distress for the love of God. On the other hand, a grievously sinful motive corrupts and makes an otherwise good action grievously wrong. It turns the agent altogether away from God, his last end. And so it

[1] St. Thomas, 1–2, q. 18, a. 6.

would be a mortal sin to give an alms to a poor woman in order to seduce her.

Even a venially sinful motive, if it be the whole or the primary motive for the action, corrupts the whole act and makes it venially sinful; for then a bad object is sought by good means indeed, but the means are infected with the purpose to which they are prostituted. And so one who preaches merely out of vanity commits a venial sin.

If, however, an end be only venially sinful, and be not the whole or primary motive of the agent, the resulting action will be partly good and partly evil. We suppose that the object is good, a partial motive or motives are also good; in this case a partial and secondary bad motive, which is only venially sinful, cannot corrupt the whole action. One who preaches principally out of obedience, but more willingly because his vanity is flattered, performs an action which is substantially good, but which is infected with a slight defect.

5. A good motive gives its own moral quality to an indifferent action and makes it good. And so I do an act of charity by depriving a man of a knife with which he was threatening to commit suicide, while the same action, done with a view to making the knife my own, would be theft.

There is a controversy among theologians as to whether the purpose or intention with which an action is performed can make an action unjust, which, apart from that intention, is not so.

Would a man, for example, be guilty of an act of injustice towards his enemy, and bound to make restitution to him, if he committed a crime, foreseeing and intending that it should be imputed to his enemy, who

would be punished for it? Of course he is guilty of a grave sin by giving way to such an act of hatred, and if by any means he procures the false accusation of his enemy he is also guilty of injustice by causing his undeserved punishment. But supposing the false accusation, though foreseen, was in no way procured by him, but was brought about by other causes, would his intention make him guilty of injustice towards his enemy, and bound to make restitution to him?

Many theologians affirm that it would,[1] but seeing that the false accusation is indeed occasioned by the crime, but not caused by it, it would seem that the bad intention of the man who committed the crime was incapable of supplying the causal connection between the crime and the false accusation. The intention alone cannot change the nature of the external action. But if this be so, he is not the effective cause of the injury done to his enemy, and he is not bound to make restitution to him.

A good intention certainly cannot make a bad action good. It is not lawful to tell a lie even to save another's life, according to the teaching of Innocent III. Evil must not be done that good may come of it. This is the teaching of Holy Scripture and of the Catholic Church, nor have Jesuits any other doctrine different from that of the Church. Father Dasbach promised to give any one two thousand florins who would prove in open court that the Jesuits had ever taught that the end justifies the means. Count Paul von Hoensbroech undertook to do so, but he failed in his suit when it was tried at Cologne, in the spring of 1905.[2]

[1] Lugo, De Justitia, disp. 8, n. 75.

[2] Civiltà Cattolica, Oct. 7, 1905, p. 3.

6. Here we must touch upon a question which has raised a good deal of controversy among divines, and which still divides them. Some, following the great St. Augustine, hold that it is a venial sin to eat and to perform other operations of our animal nature for the sake of the pleasure which they give us. Others, on the contrary, hold that the sensible pleasure which accompanies the satisfaction of our animal appetites is good, inasmuch as it is natural and intended by the Author of nature, and so to perform actions which are not wrong in themselves from the motive of pleasure cannot be sinful. If it were not for the sake of the pleasure afforded by eating and by other animal functions many men would abstain from them altogether through disgust. The imperious stimulus of our fleshly appetites and their satisfaction is required for the preservation and increase of the human race. These satisfactions of our animal nature must indeed be ruled and moderated by right reason, the norm of human conduct. If they are thus moderated, they are conformable to man's nature, they are in right order, and morally good. This seems to be the teaching of St. Thomas;[1] it is the commoner opinion among modern theologians, nor is it involved in the condemnation of the eighth and ninth propositions condemned by Innocent XI, on March 2, 1679.[2]

Point III

On the Circumstances of an Action

1. By the circumstances of an action we understand certain accidental conditions which, as it were, surround

[1] Cont. Gent. 3, c. 9, n. 1; Summa, 2–2, q. 141, a. 1, ad 1.
[2] V. Frins. De Act. Hum. 2, n. 505.

(*circumstant*) and complete the substance of the action. There are seven enumerated in the doggerel line, —

Who, what, where, when, by what means, why, and how.

The circumstance indicated by *who* does not signify the agent merely as the author of the action; the action must necessarily be done by some one; but it signifies some special quality in him or condition which affects the morality of the action. Thus if a son strikes his father, the circumstance of the parental relation changes the morality of the act, and makes it a sin not only against justice but also against the fourth commandment, or the virtue of piety. If a thief steals a consecrated chalice, the sacredness of the object makes the sin a sacrilegious theft, a circumstance indicated by *what*. And so of the rest.

It is obvious that circumstances of this kind are sources of morality, for they make the action conformable or not to the norm of morality. It is against right reason to strike any one unjustly, but it is still more inordinate to strike a parent. At the proper time it is a good action to play in the proper place, and with good playmates; if any of these circumstances be wanting, the action becomes so far bad.

2. Some circumstances affecting the intensity, or quantity, or duration of an action add to or lessen its malice, but they do not change its moral species; such circumstances are called *aggravating* circumstances. Although they do not change the moral species of the act, they sometimes make a venial sin mortal, or *vice versa*, as the quantity in theft; they are then said to change the *theological* species of the action. If the circumstances add to the action a special and distinct malice of their own, they

change its *moral* species, as the sacred object or place in a sacrilegious theft. Such a theft is not only against justice but also against the virtue of religion.

3. In order that an action may be altogether and simply good, the object, the end, and the circumstances must all be good; for good indicates completeness and perfection; there is evil in any defect. If all the sources of morality are evil, the action may have a triple malice; as when a thief steals Church plate in order to be able to indulge his vicious propensities. If only one source or circumstance of an action be mortally sinful, the perpetration of it turns the evil-doer away from God, and makes the action wholly bad. An accidental and secondary circumstance, when only venially sinful, does not corrupt the whole action; it only lessens its merit. Thus it is a grievous sacrilege to receive Holy Communion in a state of mortal sin; a state of venial sin only makes the Communion less fruitful.

Section III

On Merit

1. It follows from what has been said in the preceding section that an action will be morally good if the object, end, and circumstances are good. The object, end, and circumstances will be good if they are conformable to man's rational nature, and to the eternal law of God. An opinion was held by some theologians that besides these conditions it is necessary to refer, actually or at least virtually, all our actions to God; otherwise they will at least be venially sinful. These theologians rested their opinion on certain texts of Holy Scripture and on passages from some of the Fathers, especially St. Augustine. The

principal Scripture text is from St. Paul's First Epistle to the Corinthians, x. 31: "Therefore whether you eat, or drink, or whatsoever else you do; do all to the glory of God." There are various interpretations of the passage, but the meaning seems plain from the context. St. Paul is teaching the Corinthians the duty of avoiding scandal to Jews, Gentiles, and to the Church of God. They must so order their actions, even those that are indifferent in themselves, such as eating certain kinds of food, as not to be a cause of offense to others. Then will their actions all tend to the honor and glory of God, then will they do all things in charity (1 Cor. xv. 14). There is obviously no word here which can be legitimately construed into a command to direct all our actions to God by an actual or virtual intention of the will. Such a merely internal act would not tend to edify others, and in the text quoted this is what St. Paul is urging the Corinthians to do. Other passages which are quoted in support of the opinion are similarly capable of being explained in a sense which affords the opinion no support. It is indeed a truth, which is insisted on by other theologians, that if an action be honest and good and performed because it is conformable to right order, it is thereby implicitly directed to God, who wills the observance of right order, and who is Himself the end to which rightly ordered action tends. In this sense it is true that every good action must be referred to God; but every good action is thus referred to Him by the very fact that the object, the end, and the circumstances are good.[1]

2. Something else is required to make a naturally good action supernaturally meritorious. The question of merit belongs to the dogmatic treatise on grace; here it will be

[1] V. Frins. De Act. Hum. 2, n. 290.

sufficient to give something about the subject in outline, in order to round off our treatment of human acts.

Merit in general is a certain value in an action which gives the agent the right to be rewarded by him in whose behalf the action is performed. Merit then with God will be a right to be rewarded for one's actions by God. Theologians distinguish between condign and congruous merit. The former implies that there is some sort of equality between the value of the action and the reward, so that the reward is due to the agent in justice. If there is not this equality and title in justice, the merit will be only congruous. We can merit condignly an increase of grace, life eternal, and an increase of glory, as the Council of Trent defined.[1] Efficacious graces, by which we receive, preserve, and increase sanctifying grace, and the gift of final perseverance, are the objects of congruous merit.

3. In order that an action may be condignly meritorious, two conditions are required on the part of the agent, two on the part of the action, and one on the part of God.

The agent must be still on his probation in this present life; there is no more meriting when man's day is done. He must also be in the state of grace and friendship with God; the actions of one who is out of grace and who is a rebel and an enemy of God cannot deserve any reward from Him.

The action itself must be morally good, not bad, as is obvious; and it must be supernatural, elicited by means of grace and from a motive which is rooted in faith. Otherwise it will be merely of the natural order, deserving indeed of a natural reward, but having no proportion to the supernatural end to which we know by faith that man is destined by God.

[1] Trent. sess. 6, can. 32.

On the part of God there must be a promise made by Him to grant such a reward to such an action. For otherwise, after doing all that we can, we must acknowledge that we are useless servants, who cannot claim anything as due to them in justice from God, their Creator and Lord. He has every claim to our service without our having a strict right to any reward in return. According to the very probable teaching of St. Thomas,[1] all the deliberate actions of one who is in a state of grace are either meritorious or sinful. In order to be in a state of grace, such a one must have fulfilled all the duties which bind him under pain of grievous sin, and among these is the obligation of eliciting at the proper times an act of love of God. By such an act the just man refers himself and all he does to God, and thus his good actions are elicited by the help of grace and tend to man's supernatural end, the beatific vision of God. In any case, if we are careful frequently to renew our intention of pleasing God, and with His grace remain free from mortal sin, we may rest in the assured hope that all our good actions are meritorious of life eternal.

[1] De Malo, q. 2, a. 5, obj. 10; in lib. 2, dist. 40, a. 5, ad. 6.

BOOK II

ON CONSCIENCE

CHAPTER I

THE NOTION OF CONSCIENCE

1. The voice of conscience is the authoritative guide of man's moral conduct. Not that the individual conscience is independent of all authority; if the individual conscience is right, it proclaims the duty of submitting to all properly constituted authority, and especially to the supreme and absolute authority of God. It is, as theologians are fond of saying, the herald or ambassador of God to each individual, making known to him and applying the eternal law of God to the conduct of life.

Although the term is also used with other meanings, here conscience signifies a dictate of the practical reason deciding that a particular action is right or wrong. The process by which we arrive at this judgment of the practical reason may be put in the form of a syllogism. The major premise will be some general law of conduct, the minor will be its application to the particular case, the conclusion will be the judgment which is nothing else but conscience. Thus when a precept has been given by one who is in lawful possession of authority, the dictate of conscience is implicitly arrived at somewhat as follows: I must obey all who command me with lawful authority. A. B. com-

mands me with lawful authority. Therefore I must obey him, is the conclusion and the dictate of conscience.

2. Conscience is said to be *certain*, *dubious*, or *probable*, as the motive on which it is grounded is morally certain, doubtful, or only probable.

A *right* conscience is in accordance with the eternal law of morality; an *erroneous* conscience gives a false instead of a true judgment. If the mistake could and ought to have been avoided by the agent who has a false conscience, the conclusion is *vincibly* erroneous; otherwise it is *invincibly* erroneous.

A *strict* conscience is one which is apt to decide that there is an obligation when none exists, or a greater obligation than there really is; a *lax* conscience, on the contrary, is apt to deny an existing obligation or to make it less than it is in fact; a *scrupulous* conscience without sufficient reason apprehends sin where there is none.

A dictate of conscience which precedes the action, judging it to be right or wrong, is said to be *antecedent;* that which follows an action, approving it as rightly done, or condemning it as wrong and disturbing the inward peace of the soul, is *consequent.*

CHAPTER II

ON THE CERTAIN CONSCIENCE

1. CERTAINTY in general is a firm assent of the mind to something known, without the fear of mistake. In mathematics and in other branches of exact science we can often attain absolute certainty, which rests on the evident truth of the principles which are employed to arrive at it. For any one who is capable of following the demonstration there can be no manner of doubt that the angles of a triangle are together equal to two right angles. In the science of morality we have frequently to be content with a lower degree of certainty than this; there is often some obscurity about the principles to be applied, and human acts are not the matter of necessary and unvarying law. We have to be content with what is called moral certainty; but this again is of various degrees. I am morally certain of the existence of Berlin, though I never saw the city. Any person who doubted of its existence would be thought to be insane. The grounds on which the judgment that Berlin exists are based are so many and so strong that they leave no room for prudent doubt in the matter. In such cases we have perfect moral certainty. In other cases I may be conscious that mistake is possible but not probable, as when a man has been condemned on evidence which has satisfied a jury of intelligent men. In such cases if there

can be no prudent doubt about the justice of the verdict I have moral certainty of an imperfect but real kind. If I could not safely rely in guiding my conduct on such a degree of certainty, I should have to abstain from action altogether. Ordinarily greater certainty cannot be obtained in human affairs.

2. In order to act lawfully and rightly, I must have at least moral certainty of the imperfect kind that the proposed action is honest and right. This degree of certainty will be sufficient, for ordinarily no greater can be had, as we have just seen. It is also required for right action; for if I am not at least to this extent morally certain that my action is right, I am conscious that it may be wrong. In this case I am bound to pause, and satisfy myself that it is right before acting; for if I do not do so my will is ready to embrace what may be wrong; I am ready to do the action whether it is in right order or not. But such a will is malicious; it is not firmly set on doing what is right; and sin is thereby committed.

A subjectively certain conscience then, which tells me without prudent doubt that the action is right, is required for lawful action; "All that is not of faith is sin," as St. Paul says.[1] It will be sufficient if we have imperfect moral certainty, as we have seen.[2]

3. If I have this imperfect moral certainty that my action is right, I am justified in acting, and if with such certainty my conscience tells me that I am bound to act, I must do so, even though my conscience be erroneous. For my action is morally good if my will be good. My will is good when it tends to a good object as represented by my intellect, not as it is in itself. But if my will follows

[1] Rom. xiv. 23. [2] St. Thomas, 2–2, q. 70, a. 2.

my conscience and determines on what it prescribes, my will then tends to a good object as represented by my intellect and is a good will. So that even though my conscience be erroneous, I am justified in following it, and I am bound to follow it when it prescribes any action to be performed.[1]

This is true whenever I have a certain conscience, that is, when I have no doubt or suspicion about the honesty of my action, even though my conscience be erroneous. If I was the wilful cause of my conscience being in error by not taking means to inform it correctly, then any objectively wrong action that I perform is voluntary in the cause, and so far imputable to me, but here and now I must follow my conscience.

I am said to be *bound* by my conscience because it compels me to follow it under pain of doing wrong, committing sin, and being exposed to the pangs of remorse. It binds me also in the name of God, whose will it makes known to me. It speaks, therefore, with the authority of God, it sternly bids me follow His behests, and it reproves me with the authority of a superior if I neglect to follow its promptings. As representing the will of God its authority is greater, as St. Thomas teaches,[2] than that of any merely earthly superior.

4. The question as to whether in any particular case a person acted with an erroneous conscience is a question of fact, which only he and God can decide. Still, following approved theologians, we may make use of certain presumptions drawn from the nature of things and from experience. It may be admitted that ignorant and dull people may have an invincibly erroneous conscience con-

[1] St. Thomas, 1–2, q. 19, a. 5. [2] De Verit. q. 17, a. 5.

cerning the malice of merely internal sins committed in thought only; but we should except efficacious desires to do what is known to be wrong. A person can scarcely know that the external action is morally wrong and be ignorant of the malice of an effective desire to commit such an action.

Again, the first principles of morality, which are certain general axioms of conduct, such as, Do to others as you would be done by, can scarcely fail to be known by any one who has the use of reason. Even the secondary principles of the moral law, or the precepts of the decalogue, are usually known by those who have attained the use of reason among civilized men; if in any case there is ignorance of them, it is vincible ignorance, and so more or less culpable. Theologians readily admit the possibility of an invincibly erroneous conscience concerning the application of the general principles of morality to concrete cases. The theological disputes which they chronicle are proof of the fact.[1]

[1] St. Thomas, 1–2, q. 94, aa. 4, 6.

CHAPTER III

ON A DOUBTFUL CONSCIENCE

1. When we have some knowledge of a matter which does not amount to a certainty, various states of mind may be distinguished with respect to the mind's inclination to form a judgment about the matter in question. If no reasons are known for either affirming or denying a proposition, or if there are as weighty reasons for one as for the other, the mind suspends judgment, and is said to be in *doubt*. Doubt, then, is the suspending of judgment about a matter apprehended by the mind. A *doubtful* conscience, therefore, will be a suspension of judgment about the lawfulness of some action.

If some slight reason draws the mind in one direction, we have then a *suspicion* about the matter. If there be a good solid reason or reasons for forming a judgment in a particular sense though there is not sufficient ground for certainty, and it is felt that the opposite may be true, the mind then forms an *opinion* on the matter.[1]

Theologians distinguish a *negative* from a *positive* doubt. There is negative doubt when the mind suspends judgment for want of reasons on one side or on the other; if there is an apparent equality of reasons on either side, the doubt is positive. In this chapter we confine our attention

[1] St. Thomas, 2–2, q. 2, a. 1.

to negative doubt, the sense in which the term *doubt* is usually understood in theology. A *speculative* doubt has reference to some question in the abstract apart from present action, as when I doubt whether it is allowed to fish on Sundays, though I have no intention of actually fishing: a *practical* doubt has reference to the lawfulness of an action which there is question of performing here and now.

A doubt *about law* has reference to the law's existence or its interpretation; a doubt *about fact* has reference to fact.

2. It is not lawful to perform an action with a practically doubtful conscience as to whether the action is right or wrong. The reason is obvious; for, as we saw in the last chapter, we must have a certain conscience that the action is right before performing it, otherwise sin is committed, and one who has a doubtful conscience has not a certain conscience.

The sin which is committed by one who acts with a practically doubtful conscience as to whether the action is right takes its species and gravity from the doubtful conscience. If I eat meat with a practical doubt as to whether it is not forbidden on that day by the Church, I commit a sin of the same kind and malice as if I ate meat knowingly on a day of abstinence. The reason is obvious from what was said about a certain conscience. The species of a sin and its malice depend upon the mind and will of the agent, and when one acts with a doubtful conscience the will is prepared to commit a sin of the kind apprehended, and by that very act it commits the sin.

3. As long as the conscience is in a state of practical doubt, one may abstain from action altogether, or do what

in any case would be licit. There is no danger of sin if, while doubting whether it is allowed to eat meat, one abstains from food altogether, or eats only what is allowed on days of abstinence. The axiom — *In dubio pars tutior est sequenda* — is to be taken in this sense. An effort may also be made to resolve the doubt by making inquiries of those who know, by consulting authorities, or by making use of certain principles of conduct which are approved by law and right reason. In this manner a certain conscience may frequently be formed.

4. There are various principles or axioms suitable for the purpose of forming one's conscience when in doubt. They are for the most part taken from canon law, but they are also used in questions belonging to the forum of conscience.

In dubio melior est conditio possidentis. — Possession is properly a physical fact, and consists in the corporal detention of a thing. In a wider sense rights are objects of possession, as a right of way, or the right to one's liberty; so that if one's liberty has hitherto been unrestricted, it is said to be in possession. The very fact of possession gives a right to continue in possession unless there is an adverse and stronger claim. There is also in the possessor a presumption of title to possess, for all men are jealous of their rights, and usually do not allow their property or rights to be held by others as owners. If then I am in possession of some object or right, and a doubt supervenes as to whether I am entitled to possession in the case or not, the question may be solved in the forum of conscience as it would be in a court of law, by applying the maxim — *In dubio melior est conditio possidentis.*[1]

[1] Cf. Irish Eccles. Record, Sept., 1899.

If then a doubt arises as to whether I have said my breviary, I must say it, for the law is in possession; if on the contrary a doubt comes into my mind as to whether I have taken food after midnight, I may go to Holy Communion, because my right to receive is in possession.

5. *In dubio standum est pro eo pro quo stat præsumptio.* A presumption is a probable conjecture about an uncertain event. The conjecture is such as would be formed in the circumstances by a man of ordinarily sound judgment and prudence. This is called a *præsumptio hominis* to distinguish it from a *præsumptio juris*, which the law itself sanctions in certain circumstances. Thus, according to the old canon law, if the parents of a boy and girl promised them in marriage and they did not express dissent, there was a *præsumptio juris* that they gave their consent, and they were reputed betrothed to each other.[1] This *præsumptio juris* admits, indeed, of proof to the contrary; in cases where proof to the contrary is not admitted, there is *præsumptio juris et de jure*, as it is called.

When in doubt, I can frequently form my conscience by the aid of this axiom. If, for example, I am in the habit of saying my little Hours after breakfast, and some evening a doubt occurs to me whether I said them on that day, I need not say them then, the presumption being that I said them in the morning as usual, and — *In dubio standum est pro eo pro quo stat præsumptio.*

6. *In dubio factum non præsumitur sed probari debet.* Similarly, *Nemo præsumitur malus donec probetur.* These axioms are understood of some principal fact, the fact of baptism, for example, or the commission of a crime, which obviously should not be presumed. If on the contrary the

[1] Cap. un., de despon. impub. in Sexto.

principal fact is certain, and a doubt arises as to some accessory circumstance, then other axioms should be used to guide the conduct: as, *In dubio omne factum præsumitur recte factum;* or, *In dubio præsumitur factum quod de jure faciendum erat;* or, *In dubio standum est pro valore actus.* So that if I am certain that I baptized a child, but begin to doubt whether I anointed the head with chrism, according to the ritual, I am not bound to supply the ceremony afterwards.

CHAPTER IV

ON THE PROBABLE CONSCIENCE

1. A SUBJECTIVELY certain conscience that the proposed action is lawful is required before performing any action, as we have already seen. A great difficulty, a difficulty which has to be faced by all moralists, arises from this principle in consequence of the uncertainty as to whether many actions in the concrete are lawful. One need not consult the works of moralists to find out what difference of opinion there is among experts on many practical questions of morals. It will be sufficient to consult one's own experience. In the conflict of rights and duties, and in the obscurity which exists as to the application of moral principles to concrete cases, we are frequently at a loss as to what course duty prescribes. The cases which are constantly submitted to the decision of courts of law, but which also belong to morality, illustrate the familiar truth that opinion and not certainty is very often alone attainable in the field of conduct. But if this be the case, what is a conscientious man to do? He finds himself in a difficulty; what the right thing to do under the circumstances may be is not clear. A young man has promised to marry a girl somewhat his inferior in social position; they are satisfied that the union would be a happy one for both, but the young man's parents will not hear of the thing,

and strictly forbid him to see the girl again. Must he obey his parents, or may he follow his inclinations and keep his promise? He consults those whose knowledge and judgment he respects, and they give him contrary decisions. He goes to recognized authorities on morals, and finds the same difference of opinion.

This example is but a type of innumerable questions which constantly arise in every-day life. Is it possible to lay down any universal principle for the solution of such doubtful cases, so as to be able to act with a certain conscience?

Catholic theologians answer this question in the affirmative, but they are not agreed as to what the principle is. A probabiliorist would tell the young man that he must obey his parents and break off the engagement unless the opinion that he may marry the girl in spite of the prohibition is distinctly more probable than the opposite. An equiprobabilist would say that he may marry the girl if the weight of opinion is fairly equal on either side. A probabilist would maintain that he may marry her if there is a solidly probable opinion which favors that course. The terms are technical and their meaning should be carefully studied.

An opinion, as we have already gathered from St. Thomas, is an adhesion of the mind to one proposition, but with a consciousness that the opposite may be true.

A probable opinion is one which rests on good and solid grounds, such as would incline a man of prudence and judgment to embrace it. If the intrinsic reasons of the opinion are the grounds for embracing it, we have an intrinsic probability; if authority is the ground, we have an extrinsic probability.

A more probable opinion is one which rests on weightier reasons than the opposite, but which leaves the opposite still probable.

A very probable opinion rests on such solid grounds that the opposite is not considered solidly probable.

A morally certain opinion excludes even slight probability in the opposite; it is an adhesion of the mind to a truth without any fear of mistake.

2. In this difficult question, the Catholic Church so far has been content to condemn extreme views, and allows her children to follow any of the moderate systems mentioned above. Alexander VIII[1] condemned rigorism, which required direct moral certainty in all cases about the lawfulness of an action, and denied that it is ever lawful to follow an opinion which is very probable among several. Laxism was condemned by Innocent XI, since it taught that one might lawfully act on a slight probability.[2] The systems which are known as Probabiliorism, Equiprobabilism, and Probabilism, all have their adherents; the Catholic moralist is free to follow whichever he wishes.

To us it seems that probabilism is the true system, and if it be rightly understood, as it is taught by its moderate supporters, and not as it is misinterpreted by its opponents, we are convinced that it will recommend itself to practical common sense.

Its maxim may be formulated thus: When there is only question of committing sin or not, it is lawful to follow a solidly probable opinion, even though the opposite may be more probable.

The wording of the formula should be carefully weighed.

[1] Prop. 3, condemned December 7, 1690.
[2] Prop. 3, condemned March 2, 1679.

The words "When there is only question of committing sin or not" limit the application of the principle to cases where the only question is whether by following such a course sin will be committed because a certain law, human or divine, will be broken. Probabilism, then, cannot be applied to cases where the validity of an act is in question, where some end must be obtained, or where there is question of the certain right of some other person which must be respected. In all these cases we are bound to safeguard the end by taking means that are sure and not merely probable. These are not so many exceptions to the use of probabilism; there is a certain obligation to use secure means to obtain the end in view in such cases, and so there can be no question as to whether probabilism is applicable or not. This will explain why Innocent XI condemned a proposition which asserted that it is not unlawful for a minister of the sacraments to follow a probable opinion about their validity when administering them; and another, which taught that a judge might use probabilism in giving sentence in a court of law; and a third which excused an infidel who followed a probable opinion and remained in infidelity.[1] In all these cases there is not merely question of sin, but the certain rights of others are at stake, or there is question of an end which cannot lawfully be exposed to risk.

Again, the words "it is lawful to follow a solidly probable opinion" should be noted. It is not a question as to what is more perfect, what the noble and generous thing to do may be. The rule merely asserts that there is no obligation under pain of sin to follow the more perfect course, if in the case there be one.

[1] Decree March 2, 1679, props. 1, 2, 4.

Finally, the words are added "even though the opposite may be more probable." For the greater probability of the other view does not make it certain, nor is the supposed greater probability a sure guarantee that the more probable view is the more true. It very frequently happens that an opinion which is considered more probable at one time is thought less probable or altogether improbable at another. Moreover, degrees of probability are very difficult to determine. What seems more probable to one theologian seems less so to another, or even to the same at a different time. And even if it be granted that one opinion is certainly and absolutely more probable, the opposite may for all that remain solidly probable. With these provisos the proof of the thesis is not very difficult.

3. Whenever there is a solidly probable opinion that a particular action is lawful, there is no certain law forbidding one to perform it. But it is lawful to do what no certain law forbids. Therefore when there is only question of committing sin or not, it is lawful to follow a solidly probable opinion even though the opposite may be more probable.

The major premise of this syllogism is obvious. No opinion can be probable which has a certain law against it. The certain law imposes a certain obligation. On the other hand, if an opinion is probable and acknowledged as such by five or six experts, good, prudent, and learned men, it is impossible that there should be a law contrary to the probable opinion. Or if there is such a law, the law cannot be sufficiently promulgated, or else it would be known to the experts. But a law which is not sufficiently promulgated does not bind; ignorance excuses

from its transgression. The minor premise too is clear. We are at liberty to do what no certain law prohibits. If indeed I doubt whether an action is forbidden, I am bound to inquire and satisfy my conscience on the point. But whenever there is a probable opinion, this inquiry has been already made by experts, and with the result that no law forbidding the action can be discovered, otherwise the opinion will not be probable. The conclusion then is certain.

Therefore in cases where there is a probable opinion, or a positively doubtful conscience, I may arrive at a certain conscience required for lawful action by reasoning implicitly somewhat as follows: The opinion is probable that this action which I am contemplating is lawful, for example, marrying according to my promise a good and suitable person in spite of the prohibition of my parents which indeed does not seem to be reasonable. But if this is so, there is no law forbidding me to do it; I violate no obligation in marrying her. Therefore I may marry her.

4. The proof of probabilism from what we must call at least the toleration of the Church for some centuries will perhaps appeal still more strongly to Catholic minds.

The guardianship of faith and morals has been committed to the Church by her divine Founder. He has promised that she shall not fail in the task committed to her even to the end of time. But if a false doctrine is widely held and publicly taught for some centuries in the Church, and she does not condemn it, does not protest against it, the promise of Christ fails to be effective, which is impossible. So that probabilism, which has been widely held and publicly taught for some centuries as a theory of morals without being condemned by the Church, cannot be a false

system.[1] A third argument may be drawn from the approbation of the works of St. Alphonsus Liguori by the Holy See. The decree of May 18, 1803, on the revision and approbation of the works of St. Alphonsus with a view to his beatification, gives a list of his works and expressly states that after careful examination nothing reprehensible was found in them. Among the works mentioned is a dissertation on the moderate use of a probable opinion when it conflicts with a more probable opinion on the other side, published in 1755. In this dissertation St. Alphonsus clearly and ably defends and proves probabilism; he never withdrew or corrected this dissertation, though to save his congregation and the doctrine he afterwards modified the statement of his views. He followed probabilism in his choice of opinions while writing his great work on moral theology which subsequently, though he admitted corrections in details, remained substantially the same.

5. It has been already pointed out that, although we may lawfully adopt and follow a probable opinion, there is no obligation of doing so, and it will frequently be more perfect to follow an opposite opinion. It is not intended to propose probabilism as the ideal of Christian conduct; we go to ascetical writers, and elsewhere for that.[2] Probabilism is especially an instrument of moral theology, to be wisely and prudently used by the confessor in the confessional, as the doctor uses his medicines in the sick room.

6. Theologians warn us that only experts can judge of the intrinsic probability of an opinion. Others must be

[1] St. Alphonsus, Dissertation, anno 1755, n. 10.

[2] Cf. Rodriguez, On the Practice of Christian and Religious Perfection.

content to be able to discover extrinsic probable opinions. They can do this by consulting approved authors. If they find that an opinion is held as probable by five or six authors of repute, and it has not become obsolete by new legislation, by decrees of the Holy See, or by the progress of theological opinion, they may act upon it as solidly probable. The Sacred Penitentiary, July 5, 1831, declared that a professor of theology or a confessor might follow in practice the opinions of St. Alphonsus. In thus adopting extrinsically probable opinions with regard to conduct, the priest or the layman only does what any one not skilled in law would do in a difficult legal case, — he would consult an expert whom he could trust.

7. A limitation to the use of probabilism is mentioned by theologians. When one has decided on any course of conduct, he must loyally adhere to the consequences which the decision involves. He must not use a probable opinion to gain an advantage, and then in the same matter adopt the contrary opinion in order to shake off a burden. And so when a probable opinion has been adopted in favor of the validity of a will in my behalf, I cannot also adopt a contrary opinion that the will is invalid and refuse to pay the legacies.

CHAPTER V

ON THE SCRUPULOUS CONSCIENCE

1. A SCRUPLE is a groundless fear that there is sin where there is none. Hence a scrupulous conscience (the term is ordinarily used of the habit, not of the single act), is one which from some frivolous reason judges that a harmless action is sinful. A person moreover is not said to be scrupulous because of a scrupulous conscience in a single instance; the term is used of one who, either in some matter, or in all his actions, is apt to be disturbed with unfounded scruples.

2. An upright, straightforward, and well-balanced conscience is what it is desirable to have, and so a scrupulous conscience is in itself a bad habit. A scrupulous conscience may indeed be useful for a time to purify the conscience, and to make it more delicate and sensitive to even the appearance of evil; it is sometimes permitted by God for this and other reasons. But if it continues for a long time it causes great trouble of mind, injures the health of body and soul, and sometimes drives its poor victim to desperation, so that he gives up all attempt to be good, or even loses his senses.

3. The confessor, then, should know how to recognize a scrupulous person, what the causes of scruples are, and what are the suitable remedies in particular cases.

The prudent confessor will not at once believe a penitent to be scrupulous merely because he says that he is. Some people who are anything but pious think that it is a fine trait of character to be scrupulous, or they honestly think that they are scrupulous for want of self-knowledge, and tell the confessor so. He would obviously make a great mistake if he applied the rules for scruples to such cases. Nor can the confessor safely conclude that a penitent is scrupulous because he mentions in confession minute faults which common penitents hardly trouble themselves about. He may have before him a soul of great purity of conscience and great sanctity, who is in no sense scrupulous. Until he has heard a penitent's confession more than once the confessor will usually suspend his judgment. When the penitent keeps confessing things which are not sinful, when he says that he is troubled with doubts and anxieties about his actions, when he is not satisfied with his confessions but keeps coming back, or running from one confessor to another; when he will not follow the advice the confessor gives him, but remains obstinately attached to his own will, the confessor may usually conclude that his penitent is really scrupulous.

4. If he can find out how the scruples arose, the confessor will sometimes be able to apply a suitable remedy at once. They may arise from a variety of causes: from reading ascetical or theological books which are too rigorous or which are not suited to the person's state of conscience; from associating with scrupulous people and contracting their malady; from a naturally weak judgment or from bad health; from immoderate and indiscreet fervor and spiritual pride; from the temptation of the devil who wishes to ruin his victim, and from the permis-

sion of God, who for His own wise ends permits the evil for a time.

5. The confessor will then seek to apply a proper remedy. He may ask the scrupulous penitent whether he is prepared to follow his advice and direction. If the penitent will not do this, but goes from one confessor to another, the confessor will be able to do no good with him, and had better tell him to find some one whose directions he will follow. With one who trusts him, and tries to follow his advice, the confessor should be kind and patient; he should give short, clear rules to the penitent, without going into further explanations; he should tell him to despise his scruples and to go against them, boldly to do what he groundlessly imagines to be sinful; as of course he is justified in doing, for he knows that his fear of sin in the matter is an idle scruple. The confessor should tell him not to mention his scruples in confession, and when great harm seems to threaten the penitent from his scruples he may tell him not to say anything about them, even if on occasions he has really committed sins; for scruples may be a valid reason for not making a full confession. The confessor will exhort him to keep body and soul fully occupied in interesting work, and never to be idle; an idle brain is the devil's workshop.

Scruples commonly have reference either to past confessions, suggesting that they were not properly made, and were bad, or to temptations against some virtue, as faith or purity; or to one's actions in general, insinuating that they are sinful because not done with a proper motive, or for some other reason. With regard to the first class, the confessor will ask the penitent whether he is certain that he left out of his confession some grave matter, or that it

was sacrilegious. Unless he can say that he is certain, he will tell him not to think of the past, to leave it with our good God, but to direct his thoughts to the present and future. Even if he says that he is certain that something serious was left out, or that he had not proper sorrow for his sins, the confessor after once or twice hearing him will forbid him to mention the past again.

One tempted against faith, purity, charity, or any other virtue, should be told that temptation is not sin, that sin is in the free consent of the will to evil, and that the best way to conquer such temptations is to despise them, to think as little as possible about them, and not to mention them in confession.

The confessor should tell a penitent, who through scruples thinks he commits sin in every action, to act boldly and fearlessly, that he may do whatever is not obviously forbidden, and that it is impossible for one who wishes to serve God to commit sin, especially grave sin, without being well aware of it.[1]

[1] Reuter, Neo-Confessarius, n. 262.

BOOK III

ON LAW

CHAPTER I

THE NATURE OF LAW

1. A LAW in general is a rule of conduct, but the term needs to be defined more exactly in order to mark it off from *precepts* and *counsels*.

A law, then, in the strict sense of the word, is, according to St. Thomas, an ordinance of the practical reason for the common good, promulgated by him who has care of a society.[1]

It is said to be *an ordinance of the practical reason*, for a law orders human actions with a view to a certain end, but to order and select proper means toward an end belongs to the reason; and since the ordering in question has reference to practice, and is imposed by authority, it is attributed to the practical reason. Law then begets an obligation in the subject, and in this differs from a *counsel*.

For the common good indicates the end of all good laws.

By him who has care suggests the source of law which can only be one who has authority over the whole community. Regulations made by subordinate authorities are called in English *by-laws*, in ecclesiastical language, *statutes*.

[1] St. Thomas, 1–2, q. 90, a. 4.

Of the society; these words imply that the subject of law is not a single person or a family; a law is made for a community more or less numerous.

Promulgated. — Promulgation is the publication of the law by legitimate authority with a view to imposing an obligation. Some sort of promulgation is required in order that subjects may know of the existence of the law and the time when it begins to bind. In English legislation the time when a law will begin to take effect is often set down in the law itself; otherwise it begins to oblige when it receives the royal assent, by which act it is also promulgated.

There used to be a controversy as to what sort of promulgation is necessary in order that ecclesiastical laws may be binding. Many canonists maintained that in this matter canon law followed the civil law, which required that a new ordinance should be promulgated in the different provinces of the Empire, and should begin to bind after a period of two months. In recent times the opinion has become prevalent that authoritative publication in Rome is, by the very fact, promulgation for the whole Church. This is certainly sufficient if the Supreme Pontiff makes known his intention to bind the whole Church by mere publication in Rome, as Leo XIII seems to have done in his legislation about forbidden books.[1] Not unfrequently there is a special clause in ecclesiastical laws which defines the mode of promulgation, as in the decree *Tametsi* of the Council of Trent (sess. 24, De Ref. Matrim. c. 1), in the Constitution of Clement XIV, *Dominus ac Redemptor*, July 21, 1773, and in the Constitution of Leo XIII, *Romanos Pontifices*, May 8, 1881. Sometimes a new law is sent to

[1] Index librorum prohibitorum, 1900.

the Bishops, whose duty it is to see to the execution of the Pontiff's will.

2. From what has been already said it will be clear how a law differs from a precept. A law is a regulation made by a public authority for the common good, and directly affects a definite territory, and indirectly those who live therein. It is stable and permanent, as is the society for whose good it is made. A precept, on the other hand, is imposed also by private authority for the good of the individual, and directly affects the person — *hæret ossibus*. Regularly a precept is limited in time and expires with the death or removal from office of him who gave it.

3. Laws are *divine* or *human*. Divine law is either *natural* or *positive*. The natural law is promulgated in the rational nature of man, and is a participation in human reason of the eternal law of God, which bids us observe right order, and forbids its disturbance. Positive divine law is made known by revelation.

Human law is *ecclesiastical* when made by the authority of the Church; *municipal* or *civil* when it is the ordinance of the civil ruler. The term *civil* is frequently restricted to the Roman civil law.

Other divisions of law and their application will be clear from the chapters which follow.

CHAPTER II

ON THE POWER OF MAKING LAWS

1. No BODY of men could live together in peace without being subject to a supreme authority whose function it is to look after the common weal by defending the rights of all, repressing and punishing crime, and taking measures in the common interest which are beyond the power of private enterprise. God, from whom all power is derived, has willed that there should be a separate supreme spiritual authority to look after the spiritual welfare of mankind, and another to look after its temporal welfare. As Leo XIII teaches, in his Constitution *Immortale Dei*, November 1, 1885: "The Almighty, therefore, has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, and the other over human things. Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right. . . . One of the two has for its proximate and chief object the well-being of this mortal life; the other the everlasting joys of heaven. Whatever, therefore, in things human is of a sacred character, whatever belongs either of its own nature or by reason of the

end to which it is referred, to the salvation of souls, or to the worship of God, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Jesus Christ has Himself given command that what is Cæsar's is to be rendered to Cæsar, and that whatever belongs to God is to be rendered to God."

The spiritual and the civil power use their authority to make laws, and in this chapter we propose briefly to indicate those who have legislative authority in the Catholic Church.

2. The power of making laws resides in the supreme authority in the Church, and in any person or body of men to whom the power has been communicated.

a. The Pope, by the primacy of jurisdiction which he receives from God, is the supreme lawgiver in the Church. He exercises this function either alone or in a general council. Sometimes he acts in his own name, sometimes he uses one of the Roman Congregations for his purpose. The Congregation of Sacred Rites (S.R.C.) has received from the Pope authority to make laws for the whole Church in liturgical matters, which have been entrusted to its supervision.[1]

The general decrees, then, of the S.R.C. bind the whole Church by their own authority. The same must be said of special decrees which are comprehensive, *i.e.*, which merely interpret the meaning and application of a pre-existing law. Decrees made in answer to special questions, if they are not promulgated authentically, and especially if they are extensive, *i.e.*, if they contain a new provision of law, bind the parties concerned, but probably impose no obligation on others.

[1] Pius IX, May 23, 1846.

The Congregation of Propaganda (S.C. de P.F.), as it is called, rules missionary countries in the name of the Pope. The British Isles and the United States of America are subject to its authority. In order to be able to fulfil its office it has received from the Pope not only administrative and judicial authority, but also legislative.[1]

Not infrequently the Holy Father uses one of the Roman Congregations to issue a new law. It bears the name of the Congregation from which it issues, but the Pope makes it his own and orders it to be promulgated.[2] In other cases the Roman Congregations, with the exception of the two mentioned above, are rather judicial commissions than legislative bodies.

b. The Bishops, assembled in national or provincial councils, or separately in their respective dioceses, make laws for their own subjects. A Bishop's legislative authority is usually exercised in his diocesan synod; other ordinances are looked upon rather as precepts than laws, unless the Bishop, after consulting his chapter, specially expresses his mind to the contrary. By modern ecclesiastical law, an Archbishop has no legislative authority over his suffragans or their dioceses. He can hear appeals from their subjects, and in special cases he supplies for their neglect of duty.

Bishops, inasmuch as they are subject to the common law of the Church and the decrees of the Holy See, can make no law which is contrary to these.

c. Religious Orders have power to make laws for their own members. The power is exercised according to the special Constitutions and Rules approved by the Holy See

[1] Constitution of Greg. XV, *Inscrutabili*, July 30, 1652.

[2] Cf. Decree *Quemadmodum*, S.C.EE. et RR., December 17, 1890.

for each Order. Orders of women, however, have no legislative authority, though the superioresses, by virtue of what is called dominative power, can of course give binding precepts to their subjects.

d. Parish priests, since they have no jurisdiction in the external forum, are incapable of making laws.

It belongs to canon law to treat more fully this and similar matters connected with laws; nor is it any part of the duty of a moral theologian to inquire what is the legislative authority in civil matters.

CHAPTER III

THE MATTER OF LAW

1. It is the duty of the legislative authority to promote the common good by wise, just, and useful laws. It should apportion burdens according to the principles of distributive justice, so that they may not press unduly on the shoulders of particular classes and persons. Over-legislation should be avoided; something must be left to private initiative; individuals and families should be allowed as much freedom as is compatible with the public welfare. Even prohibitive legislation will be kept within the bounds of moderation in a well-ordered State; not all evils will be forbidden, but some even of the more serious breaches of the moral code will be tolerated by the State, lest by trying to force people to be good greater harm may ensue. What is conducive to the common weal will be the legislator's guide in the framing of laws.[1]

2. Human laws cannot be contrary to the divine law, from which they derive all their force and efficacy, so that a law which prescribes something morally wrong is no law at all, and cannot exert any binding force on the conscience. There is nothing to prevent human law prescribing or forbidding what is already of obligation or forbidden by the divine law. A parent is bound by natural, divine, and

[1] St. Thomas, 1–2, q. 96, a. 3.

human law to bring up his children properly; theft is forbidden by human and divine law.

3. An obligation which is left indeterminate by the divine or natural law may be further determined by human law as to time, place, frequency, and other circumstances affecting the observance of it. And so the civil law determines at what age children attain their majority, and which near relatives are responsible for the support of the indigent poor; the Church, too, determines the limits of the impediment of consanguinity as affecting marriage, the times for the reception of the sacraments of Penance and Holy Communion, and many other obligations left indefinite by divine or natural law.

4. An act which in itself is indifferent may in certain circumstances become opposed to the public welfare, or on the contrary may conduce to it. The legislative authority may, for the public good and to further the end for which the society exists, prescribe or prohibit such acts according to circumstances. In itself it is indifferent on which side of the road a carriage is driven, and whether it passes another on the right or on the left; but where traffic is considerable it is necessary that these matters should be regulated by law or custom. To eat meat on Friday is in itself as lawful as to eat it on any other day, but the Church has forbidden it in order that her children may exercise themselves in the practice of temperance and mortification of the sensual appetite. When an indifferent act or one which already belongs to some special virtue is commanded by the legislator from a motive which belongs to some other virtue, the act commanded henceforth belongs to the virtue which furnished the motive, if the legislator so wills. And so, inasmuch as the Church prescribes fast-

ing Communion out of reverence for the Blessed Sacrament, one who receives not fasting is guilty of irreverence and sacrilege, though, apart from the Church's law, to receive Holy Communion not fasting would not be sinful. For just as an action may get a special moral quality from the end for which the agent performs it, so the motive of the legislator may give a distinct moral quality to an act which he commands. The same holds good of prohibitive laws.

5. Acts of heroic virtue which would be impossible for the body of the people cannot ordinarily be prescribed by law. A law must be morally possible of observance for the general body of the subjects. When, however, the public good requires acts of heroism, and especially when a state of life has been voluntarily assumed which demands heroism, acts of heroic virtue may then become matter of law. The soldier must obey orders at the risk of life, and the Church is justified in prescribing celibacy to all who freely choose to enter sacred orders. If any one feels that he cannot observe the law, let him not volunteer for the service.

6. Merely internal acts which do not conduce to the common good of civil society, cannot be the subject-matter of civil law. The Church's end is the spiritual welfare of her children, to which internal acts contribute much; and so, many theologians hold that the Church may prescribe merely internal acts. She certainly has the power of prescribing internal actions concomitantly, as it is said, when they form part of a whole human action. Therefore, in commanding her children to hear Mass on Sundays, she bids them have the necessary intention, without which a human act is impossible. The Church also has authority

over internal acts when she determines the divine law about articles of faith, declaring that such a truth is to be believed, or that acts of faith, repentance, or charity, are to be elicited at certain times. Moreover, in the internal forum of Penance the priest can impose internal acts of virtue as satisfaction for sins confessed. Religious, too, who have voluntarily by vow subjected themselves to their superiors, are bound to obey the rules and constitutions which prescribe times for meditation and prayer. All theologians are agreed on these points. But apart from these special cases, it is the more common teaching of theologians and canonists that the Church has no power to make laws about merely internal acts. For such acts are not cognizable in the external forum of the Church, and, since the legislative power is coextensive with the judicial, it would seem that she cannot make laws about them.[1]

[1] Inn. III, c. 34, de Simonia; Trent. 24, c. 1, de Ref.; St. Thomas, 2–2. q. 104, a. 5.

CHAPTER IV

THE SUBJECTS OF LAW

1. ALL those are subject to the law and bound to yield it obedience who live under the authority of the legislator. And so, inasmuch as the natural law is derived from the eternal law of God, and is nothing else than the rule of action suited to human nature as such, all who participate in human nature are subject to the law of nature. Infants and madmen who do something forbidden by the law of nature, are indeed excused from formal sin for want of knowledge, but any one who wilfully provokes them to such actions commits sin by their means in so doing.

2. Human law is intended to be a guide for reasonable human beings, and so the habitual use of reason is required in order to be subject to human law. Imbeciles and children who have not yet attained the use of reason are not subject to positive law. Regularly the Church presumes that at seven years of age children attain the use of reason, and inasmuch as the law provides for what ordinarily happens we may say that at seven years children begin to be obliged to hear Mass and to fulfil the other duties of the Christian life. It is well that they should be accustomed to obey such laws as those of hearing Mass and abstaining even earlier. There are special reasons for deferring the obligation of receiving Holy Communion and of fasting.

Drunken people remain subject to the Church's law, for habitually they have the use of reason.

3. Men become subject to the Church by Christian baptism, and so all baptized persons, and these alone, are subject to the laws of the Church. Heretics and schismatics who are validly baptized are *per se* subject to the Church's laws, but a probable opinion teaches that it is not the Church's intention to bind them by such of her laws as proximately regard the sanctification of individual souls, rather than the public good. Such are the laws of keeping certain days holy, of abstaining, of fasting, of hearing Mass on Sundays. Harm rather than good would follow from intending these laws to bind heretics and schismatics.

4. Particular ecclesiastical laws are made for particular countries, or provinces, or dioceses, by the competent authority, and bind all subjects living within the territories in question. One is subject to local law by having a domicil or quasi-domicil in the territory for which the law is made. To constitute a domicil in ecclesiastical law, two conditions are required. The person domiciled must take up his abode in the place, and must have the intention of remaining there permanently unless called elsewhere. For a quasi-domicil the same conditions are required, except that an intention to remain for six months is sufficient.[1] Similarly, to lose one's domicil one must actually leave the place with the intention of renouncing the domicil.

Whoever, then, resides in a place having therein a domicil or quasi-domicil is subject to the particular laws of that place. Contracts, too, are governed by the law of the place where they are made, and whoever commits a crime is amenable to the law of the country where it is committed.

[1] S.C. de P.F., January 7, 1867.

While outside the limits of the territory in which one is domiciled, there is no obligation to obey the particular laws of that territory, for the law is territorial and does not bind beyond the limits of the territory for which it was made.

A stranger (*peregrinus*), or one who has a domicil in another place, but at present is staying elsewhere, is more probably not bound by the particular laws of the place where he is staying; for he is not subject to their authority by having either a domicil or a quasi-domicil in the place. And so, if an English Catholic happened to be in Dublin on the feast of St. Patrick, which is kept there as a day of obligation, he would not be bound to hear Mass; nor would a Dublin man who happened to be staying on that day in England. However, a stranger staying in a place where the common law of the Church is observed, is bound to act according to its provisions, though there may be a dispensation from its observance in the place where he has his domicil. And so an English Catholic staying in Rome should abstain from flesh meat on Saturday as well as on Friday. Moreover, any contracts that he may enter into or crimes that he may commit subject him to the laws of the country where he is staying in those respects.

Homeless people (*vagi*) are treated as strangers.

Regulars and probably their monasteries are exempt from episcopal authority, and so in general are not subject to the laws made by the Bishops for their dioceses. There are, however, many exceptions to this general rule, for in spite of their exemption regulars have in special cases been subjected by the Holy See to the ordinary or else delegated authority of diocesan Bishops. The special cases are treated of by canonists.

CHAPTER V

ON THE ACCEPTANCE OF A LAW

1. Legislative authority in the Church is derived from God and not from the people, so that an ecclesiastical law receives its binding force not from the will of the people but from the will of the legislator, made known by the promulgation of a law. An ecclesiastical law, then, binds those for whom it is made, independently of the acceptance of the law by the people.

2. Practically, however, if a law is not accepted or acted on by the people, it may in various circumstances be said no longer to be of obligation. If the law was never put in force, and acts contrary to it were known to and connived at by authority, the law may be said not to bind for want of acceptance. Really it does not bind because the ruler does not urge it, but tacitly consents to its non-observance. Similarly, if the greater and saner portion of a community do not observe a law, it may be presumed that it is not the legislator's will to bind the rest. It is obvious that there is question here only of disciplinary laws, for if the law decides matters of faith, obedience is at once imperative.

3. It is the duty of Bishops to make known to their people and to execute new laws made by the Holy See, especially if the new laws were sent to them for the pur-

pose, or if it is thought likely that they will be useful to the diocese.

If, however, a Bishop thinks that a new pontifical law is not suited to his diocese, he not only may, but it is his duty, to represent the matter to the Holy See, and in the meantime the obligation of the law is suspended. If the Holy See, after weighing the matter, insists on the observance of the law, obedience must be rendered to lawful authority.[1]

[1] Ben. XIV, De Synodo, 9, c. 8.

CHAPTER VI

ON THE OBLIGATION OF LAW

1. By OBLIGATION we here understand a moral necessity arising from a law to do or to forbear doing something. It is said to be a *moral* necessity, not *physical*, because it does not subject the person bound to physical but moral constraint to act according to the law; he must act thus if he would do his duty, if he would act reasonably, if he would escape guilt, sin, and punishment.

In a slightly restricted sense a moral obligation is said to be imposed on those subject to a law which binds in conscience under pain of committing sin. Such a law is called a *moral* law. If the intention of the legislator is not to bind the conscience under pain of sin, but only under pain of paying the penalty imposed, the law is called a *penal* law. If the law binds under pain of sin, and also imposes a penalty on transgressors, it is called a *mixed* law.

2. The obligation of a law depends primarily on the will of the legislator. For we are here considering not the natural law, which is imposed by the very nature of things and by God, but positive law, which depends on the will of the legislative authority for its existence, and so also for the kind and quantity of obligation which it imposes. The legislator may intend to impose a moral obligation under pain of sin, for God commands us to obey our lawful supe-

riors when they impose a strict precept on us, and disobedience to them is an offense against Him and a sin. If the matter is of sufficient importance, he may intend the obligation to be serious, so that a breach of it would be grievously sinful, or he may intend it to be only slight, whose breach would be a venial sin. It would be unreasonable to intend to bind under pain of grave sin in a light and trivial matter, and so a human legislator cannot do this. The legislator may also, if he choose, intend to bind only under pain of paying the penalty, and then the subject in case of violation of the law will only be bound in conscience to do this. The kind of obligation, then, which a law imposes depends principally on the will of the legislator, but secondarily also on the matter of the precept.

3. The kind and quantity of obligation imposed by any particular law may be gathered from the express mind of the lawgiver. If the matter be capable of a grave obligation, and in making the law words indicating a strict precept are used, *e.g.*, *we command*, *we severely ordain*, the presumption is that the law imposes a grave moral obligation. The same may be said if a grave censure or other grave penalty is imposed on transgressors. The interpretation of Doctors, and the way in which custom interprets a law, are also guides to its binding force.

4. An affirmative law, which commands something to be done, is said to bind *always but not for always*. Thus we are commanded to pray always, *i.e.*, never to abandon prayer, though we are not obliged continually to pray all day long, but only at suitable times. A negative precept, on the other hand, binds *always and for always*, so that we must continually act according to its prescriptions. At no time on days of obligation may we do servile work.

5. A law imposes in the first place an obligation on those subject to it to inform themselves of its existence and provisions, for it imposes the duty of observing it, and this cannot be done unless the terms are known; knowledge of the law is the necessary means to the end. A law also forbids us to put ourselves in the proximate occasion of transgressing it, for the avoidance of such proximate occasions is also a necessary means for the observance of the law.

6. A negative law is observed by abstaining from what is forbidden, for that is the intention of the lawgiver. Provided that we abstain from servile work on a Sunday, we fulfil that part of the law; no special intention of not working, or of fulfilling our obligation is required. An affirmative law which prescribes something to be done, sometimes requires a conscious, human act for its fulfilment; sometimes it does not. If the obligation be merely *real*, as the duty of paying a debt, even unconscious payment will suffice, provided that the creditor gets what belongs to him. If a personal obligation is imposed of performing some action, *e.g.*, hearing Mass, the action must be performed in a human manner, by a conscious, voluntary act. It is not, however, necessary to intend to fulfil the purpose of the law; we satisfy the precept of hearing Mass by intending to hear it and actually doing so; to fulfil the obligation it is not necessary to intend to honor God, nor even to be in a state of grace; the end of the precept does not fall under the precept, as the adage has it.

7. We may sometimes satisfy two obligations by one and the same action, as when a day of abstinence, on account of a vigil, falls on a Friday, or a day of obligation falls on a Sunday. Sometimes, however, the nature of the obli-

gation or the presumed will of the legislator prohibits this being done. If a confessor imposed the hearing of Mass for sacramental penance, it would ordinarily be intended that a Mass not otherwise of precept should be heard. Nothing hinders the simultaneous fulfilment of two different obligations by actions which do not clash. A priest may well say his breviary while hearing a Mass of obligation.

8. If the whole of an obligation cannot be fulfilled, we are not thereby excused from fulfilling a part, if the matter is capable of being divided, and thus in some degree the end of the law is secured. If a priest, for example, cannot say the whole breviary, he must say what he can, if the portion which he can say be considerable, and the form prescribed by the Church be observed. However, if a Bishop could not go the whole way to Rome to make his visit *ad limina*, there would be no obligation of going as far as he could.

9. When a fixed time is appointed for the fulfilment of an obligation, sometimes, according to the will of the legislator, after the term has passed, the law no longer binds; sometimes, on the other hand, the obligation must still be fulfilled. Thus, if a priest lawfully or unlawfully has omitted his breviary, he is not bound to make it up on the following day, or if one of the faithful miss Mass on a Sunday, he is not bound to supply the omission by hearing it on a week day. On the other hand, if a debt has not been paid on the date agreed on, it must be paid as soon as possible afterward, and if the Easter Communion has not been made at the proper time there still remains the duty of making it.

CHAPTER VII

ON THE INTERPRETATION OF LAW

1. The interpretation of law is its genuine explanation according to the mind of the lawgiver.

a. This interpretation may be *authentic, doctrinal,* or *customary.* It is authentic if the explanation be given by him who can make the law, and it has the same authority as the law. It is said to be *comprehensive* if it does not go beyond the law which it interprets; otherwise it is *extensive,* and in order to bind it must be promulgated, for it is in reality a new provision of the law.

Doctrinal interpretation is that which doctors and lawyers make according to the recognized rules of legal interpretation. It has weight according to the knowledge, skill, experience, and standing of him who makes the interpretation.

Customary interpretation is that which a law receives from the practice and conduct of those who are subject to it. It has very great authority, for it is presumed to have at least the tacit approval of the lawgiver, and indeed according to the adage, "Custom is the best interpreter of law."

b. A *strict* interpretation takes the words of the law in their literal meaning; a *wide* interpretation takes the words in a looser sense.

2. Many rules are given by canonists for the doctrinal interpretation of law. The following are the most important for our purpose in moral theology.

a. The words of the law must be taken in their obvious

and natural meaning. The lawgiver must be supposed to have wished to express himself as clearly as possible, and to have said what he meant. Sometimes, however, legal terms have a technical meaning which must be attended to. Thus, *legitimate* in ecclesiastical law is used of children who have been legitimated as well as of those who were born in lawful wedlock.

b. The mind of the legislator and the scope of the law must be attended to. This rule does not imply that we must try to get at the private intention and object which the lawgiver had in view in making the law. It means that we must consider the circumstances which gave rise to the law, the object which it was designed to attain as expressed in the law itself, especially in the narrative or historical portion of it. The whole law should be pondered, not merely an isolated section; and if there is question of interpreting an answer or rescript sent in reply to a question or petition, this latter must be carefully considered.

c. Laws which impose some new burden or restriction receive a strict interpretation, those which confer a favor a wide interpretation. For the lawgiver is presumed to be benignant towards his subjects, and to have expressed himself with precision and strictness in the disagreeable task of laying burdens on his people. In such a law, then, the word *clerk* will only comprehend the lower ranks of the clergy, whereas it will comprehend dignitaries and religious in favorable matters.

d. A law must not be extended from one case to another even if the same reason exist in the two cases, for the reason of the law is not the law. And so although parish priests are bound to offer Mass on holy days of obligation for their parishioners, this obligation must not be

extended to missionary priests in this country, for missionary priests, though they have the care of souls, are not parish priests. If, however, anything unjust, inequitable, or absurd, would follow from the application of this rule, then it must not be applied. And so, generally, where the law punishes the adultery of the husband, it must be applied to an adulterous wife; where power is granted to make a will, legacies may be left too. The less is contained in the greater.

3. *Epieikeia*, or equity, is a benign and equitable interpretation of the law, by which it is not deemed to apply to some particular case. For cases arise where, if the law were applied, hardship and harm would be the result. The law is made for ordinary conditions and is intended to apply in ordinary circumstances; the lawgiver could not foresee all possible cases, and he is not presumed to intend the law to press unduly on individuals, so as to cause special hardship. So that when the observance of the law in any particular case would cause special hardship which the lawgiver cannot be presumed to have intended, the person so situated is excused from obeying the law by an equitable interpretation of it. If, for example, I should incur serious risk of contracting some disease if I went out to hear Mass on a Sunday, I am excused from obeying the precept.

Such equitable interpretations are specially permitted in affirmative laws, not in those which make an act done contrary to them null and void. The common good requires that these should be observed even with grave personal inconvenience. And so the diriment impediments of marriage do not cease to bind even when they cause serious inconvenience in particular cases.

CHAPTER VIII

WHAT EXCUSES FROM OBSERVING THE LAW

1. The natural law continues to have binding force even though its observance entails great inconvenience. We must not commit murder to save the State, nor are we allowed to tell a lie in order to preserve human life.[1] Positive law, however, does not bind with the same rigor. Our Lord taught us [2] that even the positive divine law does not bind men when great inconvenience would follow from its observance. It is an axiom that necessity has no law. This is all the more true of positive human law, which must be accommodated to the moral strength of the majority of the people, otherwise it will be impossible to observe it, and nobody can be bound to do what is impossible. So that not only physical impossibility excuses from the observance of the law, but also any relatively great difficulty or serious inconvenience which constitutes moral impossibility.

No general rule can be given for estimating the degree of difficulty which would excuse from the duty of observing any particular law in the concrete. The importance of the law, the intention of the legislator, the results of non-observance of the law, the degree of difficulty in the special case, must all be considered, and a prudent judgment given in view of all the circumstances.

2. A law binds those to its observance who are subject

[1] Inn. III, c. Super eo, de usuris. [2] Matt. xii.

to it, but it does not oblige people to remain subject to it. If I do not like living under a particular law, the law does not prevent me from going elsewhere into territory where it does not bind, and thus freeing myself from the duty of observing it. If I do not like abstaining from flesh meat on days of abstinence, I may lawfully go and live in Spain, get my *Bulla Cruciata*, and enjoy my flesh meat. Such an action will be perfectly lawful, even if I directly intend to withdraw myself from the authority of the law. I have the right to use my liberty to go and live where I choose as far as the law is concerned. And when I am outside the particular territory subject to the law, it no lónger binds me. However, positive ecclesiastical law has made two exceptions to this general doctrine. Parties subject to the Tridentine law of clandestinity could not go and marry validly without the presence of their parish priest in a place where the law of Trent had not been promulgated. Nor can a penitent who has incurred a reserved case go to a diocese where the sin is not reserved in order to get absolution from his sin. Both of these points will have to be treated later.

3. As long as a person remains subject to a law he must have the will to fulfil its obligations as far as he can, so that he must not do anything with the intention of making it impossible for him to observe the law. Moreover he must take reasonable means to be able to do what the law commands, for one who is bound to secure some end is bound to use the necessary means. And so a priest who is going to travel must take his breviary with him so as to be able to say his Office; and time must be made by all Catholics for hearing Mass, receiving the sacraments, and fulfilling other religious duties. The question

as to what obstacles to the observance of a law I am bound to remove as far as I can, or whether and when I commit a sin by doing something which will make the observance of the law impossible, is one of great practical difficulty. We have already seen that it is not lawful to put obstacles in the way of observing a law with the intention of escaping the obligation. But suppose there is no such intention, does the precept of hearing Mass, *e.g.*, forbid me to go to a seaside place where there is no Catholic church, and where I foresee that I shall not be able to satisfy the precept?

This is a type of many practical questions which occur and for which it is difficult to find a general answer. The law in question, the intention of the lawgiver, the practice of good men, and other circumstances, must be weighed in each case. The answer given by theologians to the special question proposed may be taken as a guide toward a solution in other similar cases. They say that such a precept does not oblige us to foresee and make arrangements for its observance a long time ahead; such an obligation would be a great inconvenience and seriously interfere with our liberty. So that any time within the week I may go where I like without regard to the necessity of hearing Mass on the following Sunday. However, when Sunday is practically at hand, say on Saturday evening, the precept of hearing Mass begins to be urgent, and forbids me to do anything without necessity which would make it impossible for me to fulfil the precept.

In this question, as in others, we are considering what is of strict obligation under pain of sin; a good Catholic would of course try as far as possible to have the opportunity of fulfilling his religious duties on a Sunday.

CHAPTER IX

ON THE CESSATION OF LAW

A LAW may cease to bind in various ways. It may be abrogated or altogether withdrawn by the legislator, or his successor, or his superior. For he who made the law can unmake it. Derogation is the annulling of some portion of the law, while the rest remains intact. The law may fall into desuetude from non-observance, or on account of a contrary custom being introduced. It may also cease to bind because it no longer attains the purpose for which it was made, and has become useless. It may cease to bind in particular cases because a dispensation has been obtained. Something must be said on custom, on a law becoming useless, and on dispensations. This will be done in the three following sections.

SECTION I

On Custom

1. A custom in the technical sense must be distinguished from a mere *use*. A use is a constant manner of acting but without binding force. Thus we take holy water on entering the church, and receive blessed ashes on Ash Wednesday, and palms on Palm Sunday, but there is no obligation of doing so, and no sin is committed if we neglect these pious practices; they are only uses. A custom has the force of law from which it only differs in its origin. It arises from the repeated acts of the community which

it binds. However, inasmuch as in ecclesiastical matters at least, the community as such has no legislative authority, the binding force of ecclesiastical customs is derived from the express, tacit, or legal consent of the legislative authority. Legal consent to all customs which have the requisite qualities is given in the last chapter of the Title on Custom in the Decretals.

2. A custom is said to be according to the law if it confirms and interprets the law by long continued usage.

It is beside the law if it introduces a new law in a matter for which no written law exists.

It is contrary to the law when the acts by which the custom was introduced were forbidden by law. There is nothing repugnant in the notion of a lawful custom being introduced by wrongful acts, for when the custom is formed the acts cease to be forbidden, because the contrary law has in fact ceased to exist.

3. In order that a custom may have the force of law it must be reasonable and it must fulfil certain other conditions.

A custom will be reasonable if it is not against the natural or divine law, against which no custom can prevail, nor furnishes the occasion nor is an incentive to sin, nor is pernicious and hurtful to the common good. Inasmuch as custom has the force of law, it cannot be introduced by individuals or by private families, for whom precepts may be given but laws cannot be made.

It must be introduced by the repeated acts of the greater portion of a community or corporate body which is capable of being the subject of law. How many acts are required to form a custom depends much on the matter, and must be left to the prudent judgment of experts.

The acts by which the custom is introduced must be voluntary, not the product of ignorance or mistake, and unless the tacit consent of the legislator is given before, they must continue for a long time, which a very probable opinion interprets to mean ten years.

4. As custom depends on the will of the ecclesiastical superior, he may refuse to admit or he may abrogate a custom.

The clause "Notwithstanding any custom to the contrary," which frequently occurs in pontifical legislation, merely annuls general customs to the contrary, not special ones. These require special mention in papal but not in episcopal legislation. The reason of the difference lies in the fact that the Pope may easily be unaware of local customs, and he does not annul what he does not know. But a Bishop is presumed to know the customs of his diocese, and if he makes a law which is against a custom he thereby abrogates the latter.

A custom may prevail against a law which prohibits customs to the contrary, for this is only a positive law intended to excite the vigilance of authorities in seeing to the execution of a law. If, however, a law reprobate contrary customs as abuses, they cannot be introduced as long as the circumstances remain the same. Such customs would be unreasonable, and could not have the consent of the legislator.

Section II

A Law Become Useless

1. A law should further the common good; if it ceases to do this, it becomes useless, and ceases to be a law. A law then ceases to bind when it ceases to be useful for

the object for which it was made. However, it not unfrequently happens that a law was designed to further several objects, and it may well be that, though it is useless for one purpose, it is of use for another. The law which requires banns to be published before marriage is designed to discover impediments if there be any, and also to secure the publicity of marriage. It may be absolutely certain that there are no impediments, but for all that the other object of the law remains to be secured, and prevents the law from being useless. The law remains in force as long as it serves its purpose to some extent, though it may not attain all the objects for which it was made.

2. A positive law ceases to be of obligation in a particular case if it becomes hurtful, or if it cannot be observed without serious inconvenience. But does a law cease to bind in a particular case when it becomes merely useless, when it fails in that particular case to attain any of the objects for which it was made? This question is disputed among theologians. The better and more common opinion is that the law does not then cease to bind. For the law is made for the community, and if it continues to promote the common good it retains its binding force for the community. Nor can individuals shake off the obligation of such a law on the ground that it is useless for them; they are bound to conform their actions to the rules which govern the community of which they are members. Besides, there is always danger of self-deception in such matters, and it would be a dangerous principle to admit that one who thinks that a law is useless as a guide for his own conduct need not obey the law. If, however, there be no danger of self-deception, and if it is quite cer-

tain that a law has ceased to be of any use in some special case, several theologians of weight admit the probability of the contrary opinion.[1]

Section III

On Dispensations

1. A dispensation is a relaxation of the law in a particular case for some special reason. The law still remains in force, but by a dispensation one who would otherwise be bound to conform to it is withdrawn from the operation of the law. When a law forbids something to be done without leave, as when a religious is forbidden to go out without the leave of his superior, the going out with leave is not against the law, but is in keeping with it. On the other hand, when one eats meat on a Friday, with a dispensation, the act is against the law, but the obligation of the law has been removed from the person dispensed. As jurisdiction is required to make a law, so ordinary or delegated jurisdiction is necessary for granting a dispensation. Ordinary jurisdiction is that which is exercised by virtue of one's office, and in one's own name; delegated jurisdiction is exercised by the commission of one who has ordinary jurisdiction, and in his name.

A good cause is always required in order that a dispensation may be lawfully asked for and granted. All should conform to the laws made for the common good, and the superior who without just cause exempts any one from the duty of obeying a law, is unfaithful to his office, and commits the sin of acceptance of persons. If such a

[1] Bucceroni, 1, n. 172.

superior uses only delegated authority to dispense, he acts not only unlawfully, but invalidly, because he received his authority to grant dispensations only for a good cause. He therefore exceeds the limits of his authority by attempting to dispense without good reason. Similarly, one who asks for a dispensation without good cause does wrong.

A good cause for granting a dispensation must not be altogether trivial, nor is it so grave that of itself it exempts from the obligation of obeying the law. Beyond saying this, it is difficult to be more precise. Much depends on the particular law in question, and on the circumstances of the case.

2. A legislator can dispense in his own laws, in those of his predecessors, and in those of his subordinates by his ordinary jurisdiction; he cannot dispense in the laws of his superior unless he has received delegated authority for the purpose.

a. The Pope, then, can dispense in all ecclesiastical laws, even in those which have been made in a general council. He cannot dispense in the natural or divine law; but in vows, oaths, and in marriage which has not been consummated, the Pope can for good cause dispense in the name of God, or at least declare that in certain circumstances they have ceased to exist; for whether he then in the strict sense dispenses, or only declares the sense of the divine law, is a disputed point. In practice there is little difference between the two views.

b. Bishops can dispense in episcopal laws, and more probably even in those of a provincial or plenary council, unless such authority has been reserved. Although they have no authority over the common law of the Church *per se*, yet by custom and the presumed consent of the Pope,

Bishops can in particular cases dispense from the common law in trivial and doubtful matters, in matters which are of frequent occurrence, as in abstinence, fasting, observance of days of obligation, in the divine Office, and even in other matters of greater moment which admit of no delay.[1]

In modern times Bishops also receive large powers from Rome for dispensing in the impediments of marriage, reading forbidden books, and other matters. Bishops can dispense not only their own subjects but probably strangers also in such matters as fasting, abstinence, observance of days of obligation, vows, etc. There is some controversy as to the source of jurisdiction in such cases, whether we should say that the authority to dispense is derived from the presumed consent of the stranger's own Bishop, or whether by his voluntarily subjecting himself to the authority of the diocesan the latter receives jurisdiction over him for the special case.

c. Regular prelates have quasi-episcopal authority over their own subjects, and can do for them what Bishops can do for their subjects. Moreover, many privileges have been granted by the Popes to regular orders, by virtue of which they can dispense not only their own subjects but others also.

d. Parish priests by custom can in particular cases dispense their parishioners in matters which frequently occur and require prompt despatch, as in fasting, abstinence, and the observance of days of obligation. Those who have the cure of souls in places where there are no parish priests in the strict sense, have the same authority from the necessity of the case, from custom, and often by implicit or explicit grant.[2]

[1] St. Alphonsus, 1, n. 190.

[2] Concil. Westmon. d. 23, nn. 1, 3.

3. If there be a good and sufficient cause for granting a dispensation, the superior may ordinarily either grant it or refuse to do so, as he judges fit; but if serious public or private harm would follow from not granting a dispensation, charity may require that the favor should be granted. But even in that case, unless the inconvenience is so serious that it excuses from the obligation of the law, if a dispensation is refused, the law must be obeyed.

4. The power of granting dispensations is of wide interpretation, for it exists for the common good; a dispensation, however, is a wound inflicted on the law, for the law should be uniformly observed by all as far as possible, and so a dispensation is of strict interpretation, and when in doubt as to whether it extends to some particular case the law should be observed.

5. A dispensation granted for a country, province, or diocese, may be taken advantage of by all who are staying even for a time in the territory, but no one may use it outside the territory for which it is granted. The law for the time being does not bind within the territory dispensed, but it does bind outside. On the other hand, a personal dispensation, like a precept, follows the person, and may be used anywhere, unless specially restricted, as is the case with the dispensation to eat meat granted by the *Bulla Cruciata,* which cannot be used outside the limits named in the Bull.[1]

6. A dispensation ceases by being recalled by the legislator. One who has granted a dispensation by delegated authority may also for good reason recall his dispensation, and in that case the law begins to bind again. However, one who has been dispensed from a vow cannot again be

[1] "Intra limites tantum Hispanicæ ditionis." A.S.S. 35, p. 565.

bound by vow without his own free consent. The person dispensed may also renounce a dispensation granted in his favor, and, in the case of a dispensation granted from a vow, by renunciation of the dispensation the vow binds again. However, the obligation of a law can only be reimposed by the competent authority, so that the renunciation of a dispensation from a law must be accepted by the superior in order to be effective. A dispensation also ceases if the whole cause for granting it cease before the execution of the dispensation, or, if the cause is continuous, whenever it entirely ceases. And so if a dispensation from abstinence was granted on account of a weak state of health, the dispensation will cease and the law will again bind when the health has been completely established. If, however, a dispensation has been put in execution, or has been granted absolutely, it will not cease even though the cause no longer exists. And so a dispensation to marry, granted and already executed *ad prolem legitimandam*, will not cease though the child die before the marriage.

CHAPTER X

VARIOUS SPECIES OF LAW

SECTION I

The Natural Law

1. CERTAIN actions are in themselves conformable to right reason, while others are opposed to it. On account of the relation between parent and child, right reason tells us that it becomes a child to show love and reverence toward his parents; on the other hand, hatred and ill-treatment of one's parents are opposed to right reason. Conscience tells us, moreover, that it is our "duty" to love and reverence our parents, that we "ought" to do so, that we are "bound" to do so; thereby making known to us the will and precept of a superior, the will and command of God, the Author of nature, and our Lord and Master. He cannot be indifferent as to whether we follow the dictates of right reason or not; He necessarily, as He is good and holy, wills that right order should be observed by us.

The rules of conduct which right reason manifests to us, and which conscience, the voice of God, commands us to follow, constitute the natural law, which is a participation in human reason of the eternal law of God, willing that right order should be observed, forbidding it to be disturbed.

2. The objects, then, of the natural law are all those

actions which in themselves are conformable or not conformable to rational human nature. They are actions which are necessarily prescribed, because they are demanded by human nature, or, on the contrary, they are necessarily forbidden, because they are contrary to the demands of human nature. They are good or evil, not merely because they are commanded or forbidden by lawful authority, but because in themselves they are becoming or unbecoming for man to perform because human nature is what it is. This is the ground of the well-known distinction between *mala in se* and *mala quia prohibita.*

3. As rational human nature remains substantially the same, and its essential relations do not change, it follows that the duties which the natural law imposes on man do not change substantially either. The natural law, then, in itself and objectively is universal and unchanging; it binds all men at all times. However, it does not follow that the natural law is always and everywhere equally well known. In its broad general principles, indeed, it has been known and taught at all times; it would be impossible for human society to continue unless the general principles of the natural law were known and acted on. Any serious departure from the law of nature soon brings with it its own remedy and correction by the stern elimination of the delinquent. Still there may be, and there is, ignorance of particular details and applications of the law of nature, even in matters of importance and of frequent occurrence. This is true not only of savage and untutored races, not only of primitive races, but even of civilized and Christian peoples. Theologians readily admit this. Many theologians of note allow that among such peoples there may exist ignorance of the malice of forni-

cation; they warn us that other acts against the natural law are sometimes done in good faith, without any knowledge of their malice. The presumption, then, is that among Christians the general principles of the law of nature are known, but the confessor must be prepared to meet with cases of ignorance of the particular details and applications of it.

Section II

The Positive Divine Law

1. Besides the natural law, there are certain positive precepts which God has imposed on mankind. These are known to us from the manifestation of the divine will which we have in revelation, and especially in the Old and New Testament. Theologians divide the positive laws of the Old Testament into ceremonial, judicial, and moral precepts. The ceremonial precepts had reference to the system of religious worship established by God under the Old Law, the judicial regulated the civil polity of the chosen people of God, and when the old dispensation gave place to the new at the coming of Our Lord both ceased to have binding force. Our Lord, however, by no means abolished the moral precepts contained in the Old Law; on the contrary, He promulgated them anew and perfected them.[1]

2. In the New Law of Christ there are no new moral precepts except such as follow from the truths of faith which Our Lord made known to us, and from the institution of the Sacraments. We are under moral obligation to believe explicitly in the Blessed Trinity and in the Incarnation, as well as in other articles of the Christian

[1] Matt. v. 17.

faith. We are bound to receive the Holy Eucharist and other sacraments instituted by Christ. But besides such as these, it is the common teaching of theologians that the Christian dispensation contains no new moral precepts. If Our Lord called His precept of love new, He did not mean that the great commandment did not bind under the Old Law, but only that He urged it anew, gave us new motives to practise it, and especially His own divine example and wish. He also corrected some false interpretations of the moral law, which were current among the Jews of His time; He developed what was implicitly contained in the moral precepts of the Decalogue, and He added to the precepts counsels of great perfection, which He proposed as the ideal of the Christian life, but which He did not command all to follow under pain of sin. In moral theology we abstain as a rule from treating of what concerns perfection; it is our task to distinguish between what is sinful and what is not, for the use of the confessor in the sacred tribunal of Penance.

3. The law of Christ is meant not for a particular nation, but for all men. Christ commanded His followers to preach to the whole world, to teach all men to observe whatsoever He had commanded, and the new dispensation was not to be merely temporary, like the old, but it was to last to the end of time.[1]

Section III

On Ecclesiastical Law

We saw above that the Catholic Church has received from her divine Founder full and independent authority

[1] Matt. xxviii. 19.

to make laws, binding upon all her children in matters which pertain to religion and the salvation of souls. She has constantly used this power which Jesus Christ gave her. Various collections of Church law were made from an early period in her history, but those which are contained in the Corpus Juris are the most celebrated. The Corpus Juris is usually divided into two volumes. The first contains the Decretum of Gratian, a Benedictine monk, who composed his work about the middle of the twelfth century. It is a private collection, and so the documents of which it is composed have only the authority derived from their origin, unless custom or subsequent approbation has given special canons greater weight. The second volume, on the contrary, contains several official collections, made by the authority of the Holy See. These are the Decretals of Gregory IX, the Sext, and the Clementines. Any papal constitution contained in these collections has authority from the very fact of its insertion in the Corpus Juris. The second volume also contains the Extravagants of John XXII, and the Common Extravagants, both of which are private collections, although inserted in the Corpus Juris.

The Corpus Juris contains the ancient law of the Catholic Church, which has been modified and accommodated to the times by more recent councils and constitutions of the Holy See. The Council of Trent especially made many changes demanded by the altered circumstances of the times, and the Popes have at different times issued a great number of constitutions and laws to meet the constantly changing wants of the Church. These constitutions are usually quoted by giving the Pope's name and the initial words, together with the date of the document.

The common law of the Church binds in the British Isles, as everywhere else, *per se*, but some special details have not yet been introduced; we are still under the authority of Propaganda, and are looked upon as a missionary country. Besides the common law which binds the whole Church, each country, province, and diocese, has its own special laws and customs. The four Councils of Westminster contain the special provincial laws which bind the Catholics of England and Wales.

NOTE. — The ecclesiastical laws regarding the United States are derived from the common law of the Church, from the first seven provincial councils and from the three plenary councils of Baltimore, binding upon the whole country. Then there have been many provincial councils and diocesan synods, whose decrees are obligatory in the provinces and dioceses respectively, for which they were enacted. Another important part of our ecclesiastical law is to be found in those decrees of the Holy See which were specially directed to the United States; such as the Instruction of the S. Cong. of Propaganda, *De Causis Criminalibus et Disciplinaribus Clericorum* (July 20, 1878). To these are to be added the decrees, which, though originally issued for another country, were extended to the United States, such as the Constitution, *Romanos Pontifices*, by the Propaganda (September 22, 1885). It may be worthy of notice that some of the decrees of our particular councils, whether plenary or provincial, may cease to have a binding force, *e.g.*, because they were abrogated by decrees of subsequent councils. Thus it was prohibited by the First Plenary Council of Baltimore to employ ecclesiastical rites in the burial of the faithful, whose re only,

were to be interred in non-Catholic cemeteries, if Catholic cemeteries were available. This statute was modified by the Third Plenary Council of Baltimore (n. 318), so that ecclesiastical sepulture in non-Catholic cemeteries under special circumstances became permissible. — END OF NOTE.

SECTION IV

On Penal and Voiding Laws

1. We saw in Chapter VI that if the legislator chooses, and if he thinks it will be for the public good, he may intend a positive law made by him to bind, not under pain of committing sin by its mere violation, but only under pain of being obliged to pay the penalty imposed. Such a law is, as we saw, called by theologians a penal law. Besides the rules and constitutions of certain religious orders, ecclesiastical legislation does not afford many examples of penal laws. As a rule, ecclesiastical laws are either moral laws or mixed; they forbid or command an action under pain of sin, and frequently they impose a penalty on transgressors.

It may be asked whether ignorance excuses from the penalty imposed by a law. It certainly does in the case of censures, for Pope Boniface VIII expressly laid down that no one should incur any censure of which he was ignorant, unless the ignorance were crass or supine.[1] If the ignorance extended both to the law and the penalty, so that no fault was committed by unwittingly violating the law, the penalty is not incurred, for there should be no penalty without fault. Sometimes, however, the law presumes negligence, even when there is no moral fault, words, t

[1] c. 2, de constit. in 6to.

in order to excite to more diligence, and then there is said to be juridical fault, and the penalty, if imposed, must be borne.

There is a controversy among divines as to whether ignorance of the penalty only, which is attached to a fault, excuses from the penalty. It seems better to distinguish between an ordinary penalty, such as any one might expect to be imposed, and one that is extraordinary and unusual. Ignorance does not excuse from the former, while it probably excuses from the latter.

2. Some penalties are by the will of the legislator incurred by the very fact of committing the crime to which the penalty is attached; others require the sentence of the judge. Penalties which require some action on the part of the delinquent, and especially if deprivation of office is annexed to it, as a rule require the sentence of a judge; the guilty party cannot be expected to punish himself.

Simple privation of a right, which does not cause loss of reputation, inflicted in punishment of a crime, does not require the intervention of a judge; and so the Church deprives married people of marital rights in punishment of incest committed with near relatives of husband or wife.

3. In order to make sure of attaining the end he has in view, the legislator sometimes annuls and makes void some act which otherwise would have its natural effect. Such a law is called a voiding or annulling law, and there are many examples of it both in civil and ecclesiastical legislation. Thus a deed is void unless sealed, signed, and delivered; a will is void unless made with the requisite formalities; marriage between near relations is null and void. Sometimes the law makes an act voidable only,

and not immediately void, at the instance of some one who must move in the matter; otherwise the act will remain valid. Thus a contract entered into under constraint is voidable by English law; a gift made of his property by a religious under simple vows is voidable by his superior, unless it has taken effect and a third party has thereby acquired rights. Sometimes the law does not annul the act, or make it voidable, but it refuses to grant an action to vindicate a claim, or it bars the remedy. Thus English law will not aid the winner to recover a wager, nor does an action lie to recover payment of a debt barred by lapse of time.

4. A voiding law sometimes directly affects the act, and makes it of no effect, as does an impediment of marriage; sometimes it immediately affects the capacity of the person, as ecclesiastical law deprives religious who are solemnly professed of the capacity to make a valid will; sometimes it annuls an act destitute of certain formalities, as a clandestine contract of marriage.

5. If a voiding law also prohibits the acts which it annuls, it binds subjects not to perform such actions; charity and justice require also that a lawyer employed to make a will should draw it validly according to the law; otherwise one who performs an act made void by law, but which is not morally wrong or injurious to others, does not commit a sin.

6. Neither ignorance, nor grave fear, nor serious private inconvenience avail to make valid an act which has been made void by the law. For none of these causes affects the objective validity of the act which the law strikes at for the common good. If, however, a voiding law causes great public inconvenience, then it ceases to be for the

common good; it ceases to be useful, and thereby ceases to be a law with binding force.

Section V

On Civil or Municipal Law

1. The civil authority has full power to make laws in order to the attainment of its own special end, which is the common temporal welfare of its subjects. If these laws are just, they cannot be ignored by the moral theologian, for very many practical questions will depend on them for their solution. When the classical authors published their folios on moral theology, they appealed for the most part to the *jus commune*, the common law of Christendom, which was the Roman civil law slightly modified by local enactments and customs. Nowadays this cannot be done. The unity of Christendom with its common, universally accepted stock of ideas and laws, no longer exists, and regard must be paid to municipal or local law. Especially in England and in America must this be done, for the system of law which is in force among us is distinct from the Roman civil law, and from the modern European systems which are largely based upon it.

In this section, then, we will consider the bearing of English law on questions of conscience, and try to lay down certain general principles which will guide us towards the solution of particular cases as they arise.

We saw above that the legislative authority in civil matters can bind the conscience under pain of sin by its laws, if it so choose, for God bids us obey lawful authority. It is clear, too, that if the civil authority transgresses the limits assigned to it, and makes laws which conflict

with the law of God, or with the law of the Church in her own sphere, such civil ordinances have no binding force. Laws, then, which affect to dissolve the bond of marriage, which refuse to acknowledge rights of religious granted by the Church, and others of a similar nature, are no true laws at all, and need not be regarded, except in so far as is necessary to avoid greater evil.

2. With regard, however, to such laws as it is within the competence of the State to make, conscience obliges us to pay loyal obedience to those which urge and apply the law of nature. Near relatives are bound to support the indigent poor because it is their natural duty, and also because the State commands it; and, similarly, crime must be avoided because it is wrong, and because the State forbids it. Where the law of nature is indeterminate and vague, but where the positive law has stepped in to define rights for the common good, conscience must also submit to the civil law. Unless we admit this, we shall have to say that in such matters there is no certain and definite rule for conscience to follow; rights and obligations will be left in uncertainty, to the serious disturbance of men's consciences and the public inconvenience. Laws, therefore, which govern prescription, the rights of inventors and authors, the distribution of the property of intestates, the property rights of married women, the capacity of minors, and contracts, will have binding force in both the external and internal forum.[1]

3. Certain laws merely refuse an action to vindicate a claim, or bar the remedy. Such laws do not annul or invalidate any natural right which may exist in the case; the law cannot produce an effect which was never

[1] D'Annibale, 1, n. 206.

intended by the legislator, and which is repudiated by those who administer the law. A debt, then, which is barred by statute still remains a debt, and must be paid; an unstamped document may suffice to prove an obligation in conscience, though it would not be admitted in a court of justice until the defect was made good; contracts seriously entered into and completed will bind the conscience, even though the law will not enforce them because they are not in writing, or because there is not the consideration which is required by law.

4. A very probable opinion of long standing in England maintains that merely positive laws are penal, and do not bind under sin except to submit to the penalty in case of violation, and if it be imposed. Of course it is well that all subjects should loyally obey all the just laws of their country, and good citizens will make a point of doing so; but in moral theology we are concerned with the question of sin, and it is probable that one who violates a positive law of England does not commit sin thereby, if he be prepared to submit to the penalty, if imposed. This is the teaching of Blackstone, and although other views concerning legal obligation have become fashionable since he wrote, his opinion would seem not to be materially affected thereby. According to Austin the chance of incurring the evil imposed by the legislator on those who transgress his laws is the only possible obligation of law, — a doctrine which would make all laws penal, and nothing else but penal. The idealist school does not accept Austin's views, but its only conception of moral obligation is that it is self-imposed; it denies that moral obligation is or can be imposed by a legislator.[1] It is true that if the

[1] T. H. Green, Lectures on the Principles of Political Obligation.

legislator wished to impose a strict and perfect obligation by positive law, the subject would be bound under sin to conform to it, but the English legislature cannot be said to do this, as the common opinion in the country, on one ground or another, is that a moral obligation under pain of sin is not imposed by positive law.

NOTE. — Archbishop Kenrick in his Moral Theology, writing with special reference to the laws of the United States, holds a view somewhat different from what is here set down as the common opinion regarding the laws of England. He is of the opinion that besides the civil laws which are explanatory of the natural and divine positive law, there are others which are also binding in conscience, viz. those enacted to promote the good morals of the subjects. Thus he says that the law prohibiting the sale of intoxicating drink without a license has an obligatory force in conscience. There are other positive laws which he considers to be merely penal. — Cf. Kenrick, Moral Theology, vol. i., p. 273 *et seq.* — END OF NOTE.

5. The effect of voiding laws in English jurisprudence seems to be not to invalidate an act or a contract which is otherwise valid, but to empower the party concerned to annul it if he choose to take advantage of the law. Unless the party concerned move in the matter, the act struck at by a voiding law will remain valid. This seems to be the view which lawyers take of the effect of such laws; it is in keeping, too, with a very prevalent theological opinion concerning the nature of voiding laws in modern jurisprudence.[1]

[1] Encyclopedia of the Laws of England, s.v. Null and Void.

Section VI

On Privileges

1. A privilege is, as it were, a private law which grants a special favor to some person.

It is a law, because although as a general rule no one is bound to use a privilege, since what is granted as a favor should not become a burden and a restriction to liberty, yet it lays on all the obligation of respecting the privilege, and of doing nothing contrary to it. Moreover, those privileges which are granted not to individuals, but to bodies of men like clerics and religious, cannot be dispensed with or used at the good pleasure of members of the privileged bodies. Individuals cannot renounce the privileges of their order, but they are bound to act in accordance with them.

2. A privilege is against the law, if it derogates from the law in favor of the privileged person; it is beside the law, if there be no law from which it derogates.

The lawgiver to whom the law is subject can alone grant a privilege against the law, and within the territory subject to his jurisdiction. Within that territory all, whether subjects or strangers, may enjoy the privilege; no one may enjoy it outside the territory of the grantor, unless it be in the nature of a personal dispensation from the law. A privilege which is against no law may be granted to any one.

A personal privilege is directly and immediately granted to a physical or moral person; a real privilege is granted directly and immediately to a place, office, dignity, or thing, and mediately to persons with respect to the place, office, dignity, or thing.

3. Privileges are to be interpreted according to the terms in which they are granted. And thus if a privilege is granted by the Pope to a confessor by which he may absolve from cases reserved to the Holy See, he cannot thereby absolve from specially reserved cases, much less from the two cases contained in the Constitution *Sacramentum Pœnitentiæ* of Benedict XIV, which can only be absolved by faculties specially delegated by the Holy See.

Privileges granted to corporate bodies, such as religious orders, inasmuch as they are rewards for services rendered to the Church, and are for the common good, admit a wide and favorable interpretation. Even privileges granted to individuals, if they cause no prejudice to others, such as leave to eat meat on days of abstinence, receive a wide interpretation. Personal privileges, however, which benefit the privileged while curtailing the rights of others, as exemption from paying tithes, are regarded as a wound inflicted on the law which should be equally observed by all, and so they receive a strict interpretation.

4. Privileges cease by being revoked by the competent authority, by being renounced by the person privileged if the renunciation be accepted by the superior, by non-use, and by contrary custom. Personal privileges, moreover, cease on the death of the person privileged; real privileges cease on the destruction of the object to which they are annexed.

5. Of the many privileges which the clergy formerly enjoyed, that of precedence, of the canon, and of the forum, are still of practical importance. Precedence is granted to the clergy on account of the dignity of their calling, in accordance with certain rules sanctioned by custom and by the Holy See. The privilege of the canon is now

contained in the Constitution *Apostolicæ Sedis* of Pius IX, and grants to all ranks of the clergy and religious orders personal inviolability, so that any one who unlawfully uses violence against them incurs excommunication, the absolution from which is reserved to the Pope. The causes of the clergy, both civil and criminal, used to be tried in the courts Christian; they enjoyed exemption from the jurisdiction of secular tribunals. By a decree of the Holy Office, January 23, 1886, in countries like England, where the matter has not been arranged by special agreement with the Holy See, no Catholic should bring an action in the civil court against a priest without leave of the Bishop, or against a Bishop without leave of the Holy See.[1]

6. Religious orders have at different times received very ample privileges from the Holy See, so as to enable them to work for God and the Church with the greater freedom and fruit according to their Institute. These privileges are granted immediately to the religious superiors, and are by them communicated as occasion requires to their subjects. The regular or mendicant orders, who take solemn vows, are exempt from the jurisdiction of the Ordinaries, and subjected immediately to the Holy See. Exemption, however, and many other privileges of religious have been largely curtailed, especially since the time of the Council of Trent, and now, as far as their work among the faithful is concerned, and their public conduct, regulars are to a great extent subject to the authority and correction of the Ordinary.

[1] Collectanea S.C. de P.F., n. 240.

BOOK IV

ON SIN

PART I

ON SIN IN GENERAL

CHAPTER I

THE NATURE OF SIN

1. A SIN is nothing but a bad human act, and it may be defined as a free transgression of the law of God. For a bad human act is a disturbance of right order either because in itself it is against right reason, as murder or suicide, or because it is against the command of a legitimate superior, which imposes a strict obligation, and which right reason bids us obey. But such a disturbance of right order is against the law of God.

Every voluntary act against right reason is an offense against God and a sin, for although the sinner in committing sin does not always think explicitly of God, yet he always apprehends that he is doing a wrong action, an action which his conscience condemns, and in the condemnation of conscience is implicitly contained the condemnation of God Himself.

A sin must be distinguished from an imperfection, which is either negative or positive. A negative imperfection is merely the omission of a good action which is not of pre-

cept; and such an omission when grace moves one to perform the act, though not a sin, yet is a falling short of the perfection which was within one's reach. A positive imperfection is a violation of God's will made known to us, but which does not strictly oblige us. God wishes a religious to observe his rule, but frequently this does not bind under sin. A positive imperfection, then, is a falling short not only of the perfection which was offered to us and which we might have had, but also of that which God wished us to have, though He did not oblige us to have it.

2. Sin in the sense defined is called *actual* sin; *habitual* sin is the state which follows the commission of actual sin until this be forgiven.

A *formal* sin is committed knowingly and wilfully; a *material* sin is committed without knowledge or free consent.

Sin is said to be against God, our neighbor, or ourself, as it is against some virtue which immediately regards God, or our neighbor, or ourself. All sin is ultimately against God.

Sins of *ignorance* are committed through culpable ignorance; sins of *infirmity* through passion or bad habit; sins of *malice* with cool deliberation and forethought. The last, as is obvious, are the least excusable.

A sin of *commission* is an act against a negative precept; a sin of *omission* is the wilful neglect of a positive precept.

The meaning of the terms, sins of thought, word, and deed, is obvious.

3. To commit sin there must be actual advertence to the malice of the action done, either when the action is performed, or when the cause is put. This follows from what

was said above about human acts, which must be voluntary either in themselves or at any rate in their cause. But no act is voluntary without previous knowledge and advertence. It is not sufficient then for sin that a man could physically advert to the wrongfulness of his action, and should have done so; if there was no advertence either at the time of the action or when its cause was put, there is no sin. However, advertence to what is likely to follow when the cause is put is sufficient to contract the malice of sin; and so wrong done through wilful negligence, or passion, or habit, or carelessness, is imputable to the agent.

Advertence to an evil thought or motion does not constitute sin without free consent of the will. The will consents when it voluntarily accepts an evil suggestion presented by the mind, and it is immaterial whether the evil originates in the will, or whether the will accedes to evil when suggested to it from without. For sin, then, there must be both advertence to the evil, and free consent to it; a man who takes another's money, thinking it to be his own, does not commit theft, nor does the kleptomaniac who is powerless to refrain.

CHAPTER II

THE GRAVITY OF SIN

1. With reference to the gravity of its malice, sin is divided into mortal and venial. Holy Scripture teaches us that there are certain sins which exclude from the kingdom of God,[1] and, on the other hand, that the just, even while they remain just, frequently fall into slight faults.[2] The same truth is taught by the Church.[3] There are, then, mortal and venial sins.

The essence of mortal sin consists in turning aside from God, our last end, and virtually placing our supreme happiness in some created good. But our last end is the vital and guiding principle of moral conduct, and to throw that aside is to make complete shipwreck of the moral life. It is not merely to wander out of the direct path, as is done by committing venial sin; however much this is done, if the ship be kept moving toward the port, it will come to harbor at last; but if the ship be steered altogether away from the port, it will never get there. By committing mortal sin, then, we turn away from God, our last end; we rob our souls of the sanctifying grace of God which is their life, and we incur liability to eternal separation from God and punishment in hell. Venial sin is

[1] 1 Cor. vi. 9. [2] Prov. xxiv. 16; James iii. 2.
[3] Trent. sess. 14, c. 5.

indeed an offence against God, but it does not turn the soul away from Him, nor rob it of His sanctifying grace; and it is more easily pardoned than mortal sin.

2. Mortal sin is sin in the fullest and most complete sense; it is an act of consummate wickedness. A bad act must have three conditions in order to be mortally sinful:

a. There must be full advertence to the grave malice of the act. A child that has not yet attained the full use of reason, a person half asleep, or half drunk, or half-witted, cannot know and appreciate sufficiently the malice of mortal sin, and so cannot commit it. It is not, however, necessary to reflect explicitly on God; or on the grave wickedness contained in the act in order to sin mortally. It will be sufficient if one who has the full use of reason consciously does what he knows to be seriously wrong, although there is no actual weighing of motives for doing or avoiding the act, no actual thought of God, no explicit calling to mind of the terrible consequences of mortal sin. Men who never think of God from morning till night, men who do not believe in hell, certainly commit mortal sins when they do what their consciences tell them is seriously wrong. Their conscience, as we saw above, is the voice of God.

b. Besides advertence of the mind to the malice of the act, there must be full and free consent of the will to do it. If a man does not give full consent, but only dallies with the temptation, there is venial but not mortal sin; if, through being only half conscious or partially deranged, he has not full control over his will, he cannot be guilty of mortal sin.

After a temptation to sin is over, the conscience is sometimes uncertain and troubled as to whether full consent was given to sin. Often one may form one's conscience

on the point by reflecting whether he was fully awake or conscious of what he was doing, whether the sinful act to which temptation impelled him was executed if there was the opportunity of doing so. If doubt remains, it should be settled by presumptions drawn from what usually happens. If he usually yields to such temptations, the presumption is that he did so on this doubtful occasion; the presumption is in his favor if he does not usually yield consent.

c. The object or the matter to which consent is given must be seriously against the moral law in order that a sin may be mortal.

The matter is serious as a rule when the sin committed is directly against our duty to God, as blasphemy, heresy, hatred of God, idolatry, despair of God's mercy.

The matter is also serious when the sin causes great harm to our neighbor, as do sins against justice, charity, and obedience.

When sins cause great harm to the sinner himself, the matter will also be serious and the sins mortal. This is the case with sins of intemperance and lust.

3. Some grievous sins are always mortal if there be full advertence and consent in the act. They do not admit parvity of matter, as theologians say. On the other hand, some sins, which, if the matter be serious are mortal, become venial when the matter is light; sins against justice and charity are of this kind. It is a mortal sin to steal ten pounds, it is a venial sin to steal a penny. Some sins are of their nature venial, and only become mortal when they contract some special malice from the circumstances. Fidelity to a simple promise binds under pain of venial sin, but when the promise is bilateral and the matter

serious, as in espousals, it binds under grave sin and in justice.

4. From what has been said about mortal sin, it will be clear that a sin will be venial if any one of the three conditions required for mortal sin be wanting.

5. Mortal sin may in certain circumstances become venial, and, on the contrary, venial sin may become mortal. The following paragraphs will make this clear.

a. Mortal sin may become venial on account of an erroneous conscience which wrongly judges a grave sin to be only venial.

b. The same may happen on account of imperfect advertence or imperfect consent to an act which in itself is gravely sinful.

On the other hand, a venial sin may become mortal:

a. On account of an erroneous conscience which falsely judges a venial sin to be mortal.

b. On account of a gravely sinful intention with which a venial sin is committed, as when a lie is told in order to commit adultery.

c. On account of the proximate danger to which one is exposed of committing grave sin, as when one reads a slightly indecent book, but foreseeing that it will be the proximate occasion of grave sin.

d. On account of grave scandal caused by venial sin.

e. When light matter coalesces and becomes grave by additions, as when one who is bound to fast, frequently in the day takes small quantities of food, which are notable in the aggregate; or when a considerable amount of money is stolen in small thefts.

Although no mere multiplication of venial sins can ever amount to a mortal sin, yet venial sin frequently com-

mitted disposes the soul to commit mortal sin both directly and indirectly. Directly, by forming a habit which becomes stronger and stronger, continually requiring greater indulgence for its satisfaction, and finally leads to mortal sin. This is often seen in such sins as theft and lust. Indirectly, because venial sin familiarizes the soul with wrongdoing, lessens the fear of God in the soul, diminishes the fervor of charity, and causes God to withhold those more abundant graces which He would otherwise give, and which would preserve the soul from sin, but without which the soul falls grievously.

6. To deliberate whether we shall commit mortal sin or not, weighing the reasons on either side, is itself a grievous sin. It is against the precept of charity, by which we are obliged ever to cling unswervingly to God; it is a grievous injury to God, as if a subject were seriously to deliberate whether he should or should not be faithful to his king and country.

7. In this chapter we have for the most part kept in view the objective malice of sin. As a rule the confessor should judge of sins confessed according to the objective malice, but he will, of course, bear in mind that the subjective malice of sin may be very different from the objective. The subjective malice of sin will depend upon the degree of instruction and knowledge, the graces which the sinner had received, the violence of the temptation to which he was subjected, whether he was influenced by habit perhaps unconsciously formed, or whether he was the subject of hereditary tendency, and many other considerations. It is obvious that the question of subjective malice must be generally left to the infinite knowledge of God, who alone sees and penetrates the inmost recesses of the heart.

CHAPTER III

ON DIFFERENT SPECIES OF SINS

1. The Council of Trent teaches[1] that all Catholics are bound by divine law to confess to a priest all the mortal sins into which they may have fallen after baptism. A confession of sin in general terms will not suffice, but as far as is possible the confession must be integral, that is, each and every mortal sin must be confessed according to number and species. The confessor then must know when this duty is sufficiently fulfilled, or he must know how to distinguish the different species of sins. To enable him to do this, theologians have formulated three rules, of which sometimes one, sometimes another, is more serviceable for determining the species of any particular sin.

2. Rule 1. Sins differ specifically according as their formal object differs. This rule is merely an application of the universal principle that acts are specified by their formal objects. Sins are bad human acts, and so, as we saw when treating of human acts, their formal object gives them their specific moral quality. The formal, not the material, object specifies the sin; that is, the object, inasmuch as it is morally wrong, causes the will which tends to it to be a vicious will in a certain definite way. And so adultery is a specifically different sin from fornication, because in the former case right order is doubly violated in a way that does not belong to fornication.

3. Rule 2. Sins are specifically different according as

[1] Trent. sess. 14, c. 5.

they are opposed to specifically different virtues. The reason of this rule is fundamentally the same as that of the former, for virtues are specifically distinguished according to their acts, and acts are specifically distinguished according to their formal objects. And so, inasmuch as charity is a different virtue from justice, hatred, as being opposed to charity, is a specifically distinct sin from theft or detraction, which are against justice.

4. Rule 3. Those sins are specifically distinct which are transgressions of formally distinct laws.

Laws, however, are formally distinct not because they are made by different authorities; the same sin of theft is against the natural, divine, ecclesiastical, and civil law. But when the motives of two laws are different, and the legislators wished to impose on their subjects the obligation of the special motive which they had in view, the laws will be specifically different, and sins against them will be specifically distinct. Thus the Church commands her children to abstain from flesh meat on Fridays, in order to exercise themselves in the virtue of temperance by curbing their appetite; she forbids any one to receive Holy Communion who has not been fasting from midnight, out of reverence to the Blessed Sacrament; these two laws then are formally different laws, and violations of them are specifically distinct sins. Sometimes the Church, in forbidding an action, does not choose to clothe her precept with the obligation of the motive which induced her to make the law, and then violations of the law will be simply sins of disobedience. Thus bad books are frequently forbidden with a view to safeguarding the faith, but one who reads such books unlawfully does not thereby and necessarily sin against the faith.

CHAPTER IV

THE NUMERICAL DISTINCTION OF SINS

1. If a man steals five pounds from A on one day, and another five pounds from B the day after, he commits two distinct sins of theft. There is no difficulty about such cases. But how many sins does a man commit who, with the intention of seducing a woman, begins with bad talk, immodest looks and touches, and finally attains his end? Or how many sins are committed by one who is almost all day long occupied with bad desires, which are, however, interrupted by his taking his meals and by other occupations? Or how many sins does he commit who sets fire to a building where a dozen people were asleep who all perished in the flames? In order to decide as far as possible such difficult questions as these, and enable penitents to confess the number of their sins according to the divine precept, theologians have drawn up the following rules:

2. Rule 1. There are as many sins as there are total objects in sinful actions. By *total object* is meant an object of the will which either in itself or by the intention of the agent forms a complete whole, and is not referred to another action as a part to the whole. Thus the theft of a sum of money is a complete whole in itself, and forms a total object of the will. Immodest touches may form a complete whole if the intention be restricted to them

without an idea of going farther; but if immodest touches are intended as a means to commit further sin, they form one complete whole with the subsequent sin, and make one sin with it.

The reason of the rule is clear from what has been said before. The object specifies the act, and if there be one whole object from a moral point of view, there will be one complete moral action and one sin.

3. Rule 2. There are as many sins as there are moral interruptions in the sinful act. We say "moral interruptions" because the laws for confession are to be understood according to the common estimation of ordinary men, not according to the subtle distinctions of the philosopher. And so, if common sense tells us that on account of some interruption in the course of a bad desire, there are two human acts, and not one continuous action, there will be two sins and not one. However, the main difficulty in this question is to decide what moral interruption is sufficient and necessary to break the moral continuity in an action, and to multiply the sin.

It is clear that if a person gives up his sinful design, and then returns to it again, there will be a break of continuity, and two distinct sins. Moreover, without explicitly relinquishing his evil design, there may be such an interruption in entertaining it that when it is taken up again there will be a new action and a distinct sin. The interval which is necessary for such an interruption will vary according to the nature of the act and the circumstances.

a. In merely internal sins of thought, any complete cessation from the bad thought would seem to be sufficient to interrupt the moral continuity of the action and to multiply the sin. However, if the interval is short, and

the thoughts proceed from the same impulse of passion, or one depends on another and issues from it, the moral unity will not be broken, and there will be only one sin.

b. A determinate purpose to commit an external sin, murder, for example, is not multiplied by ordinary interruptions demanded by sleep, meals, or daily occupations. Such a purpose, persevered in for a week or so, would constitute only one sin. The same would hold for a longer period if the purpose were renewed at short intervals, and never retracted. If, however, it were not renewed within a short interval, more lapse of time would eventually cause the purpose to evaporate and cease to exist, so that renewal of the purpose after a considerable interval would constitute a new and distinct sin.

It is very difficult to define precisely what interval of time would be required to break the moral continuity of the act. Much depends upon circumstances; a longer interval would be required when the act was not renewed through forgetfulness, or because no occasion of renewal presented itself; a shorter would suffice if the ceasing to entertain the sinful purpose were voluntary. No better rule can be given than that the question of time must be left to the judgment of a prudent man.

c. If the purpose to commit sin is from time to time externalized by the taking of some means to the end in view, the act remains one and the same for a long interval of time, and such a purpose entertained for months and years under those circumstances would constitute only one sin. Similarly a purpose persevered in for years, not to pay a debt that is owing, constitutes only one sin, though of course it is more grievous the longer it is entertained.

4. It is a disputed point among theologians whether a sinful act which is directed to many distinct objects is only one or many sins. An example will illustrate the difficulty. If an anarchist throws a bomb into a crowd of people and kills a score of them, does he commit a score of distinct sins of murder which must be mentioned in confession if he goes to confession, or does he commit only one big sin, whose malice indeed equals twenty, but which is adequately confessed by saying "I killed a number of people by throwing a bomb?" It will not suffice to say "I committed homicide," for that would mean the taking of one life only, which was not precisely what was done.

In this controverted question it would seem better to distinguish, and say that if the objects were capable of being grouped together and actually were conceived as one object by the mind, there was one act and one sin. If, however, the criminal distinctly thought of the several objects and intended to kill each and all, there will be as many sins as there are distinct objects. A priest who, when starting for a fortnight's holiday, intends to omit his breviary during the whole time, commits one big sin; but if he executes his design, he commits a new sin every day that he neglects his duty, for the office of each day forms one total object, and the precept of saying the divine office is virtually multiple, and falls on each and every day.

5. If the means used to commit a sin are themselves evil and of the same species as the sin, and if they can be regarded as parts of one total object, as for example, immodest talk and touches with a view to fornication, such means need not be distinctly confessed, as we saw

above. If, however, the evil means are of a different species from the sinful end, as for example, lying in order to commit a theft, the evil means are a separate sin, and must be distinctly confessed. If the means used to commit a sin are not in themselves sinful, they need not be confessed, unless the end was not attained, and in that case it will be sufficient to express in general terms in confession the use of means to give effect to a sinful purpose, by saying for example, "I tried to commit theft," if the intending thief merely entered a house, but failed to effect his design.

Part II

ON CERTAIN KINDS OF SINS

CHAPTER I

ON SINS OF THOUGHT

1. There are as many kinds of bad thoughts as there are different kinds of sin, but for the purpose of this chapter they are commonly reduced by theologians to two kinds: bad desires and morose pleasure in evil imaginations. Desire, therefore, is here understood in a wide sense and comprises a longing, a wish, purpose, or intention of doing something wrong. Morose pleasure is voluntary joy, delight, and satisfaction, in an evil imagination, and what is said about it is also applicable to voluntary sadness and sorrow on account of something good, which should cause the opposite sentiments.

Desires are efficacious when there is the intention of taking the necessary means to obtain what is desired; they are inefficacious or conditional when this is not the case.

2. An efficacious desire of doing what is wrong is a sin of the same kind as the external action would be; it contracts the malice of the object and of all the circumstances of the object. The reason is plain. The external action in the concrete with all its circumstances is the object to which the will tends in forming an efficacious desire; and as an act is specified by its object, the evil

desire belongs to the same species of sin to which the external act would belong when performed in the circumstances contemplated.

The same must be said of inefficacious or conditional desires, unless the condition takes away all the malice of the act, as it frequently may do. There is no harm, for example, in saying "I should like to eat meat on a Friday, unless the Church forbade it;" and the same is true generally whenever the condition, "If it were lawful," is annexed to a merely positive prohibition. If this condition is annexed to a desire against the natural law, as "I should like to steal if it were lawful," or "I should like to commit fornication if it were not forbidden," the condition does not remove all the malice of the vicious will, for the very tendency of the will toward such objects is against right reason. Such conditional desires then are sinful, unless they indicate a mere propensity towards such sins without any voluntary affection of the will. In any case, however, they are dangerous, and should not be indulged or expressed.

3. Morose pleasure in the imagination of what is evil is what ordinary Catholics mean by a bad thought in the restricted sense. It is sinful when voluntary, for it is an approbation, a satisfaction in what is wrong; it is an act of the will which is specified by a bad object, and so it derives its special character and malice from the object. To take pleasure, then, in the thought of revenge, is a different sin from taking pleasure in the thought of adultery.

There is a difference, however, between the source of the malice of evil desires and of morose pleasures. We have seen that evil desires contract all the malice of the object and of its circumstances. Morose pleasure, too,

contracts the malice of its object and of any circumstance which is a motive of the pleasure, but not of other circumstances which may belong to the object in the concrete. For the will in morose pleasure tends to the object not as it exists in the concrete with all its circumstances, but as it is represented in the imagination, and precisely in so far as the object thus represented allures the appetite. Morose pleasure, then, takes its malice from the object, but not from all the circumstances of the object.

Taking pleasure in an evil imagination must be distinguished from taking pleasure in the thought of sin. It is not sinful to take pleasure in thinking about pride, for example, and trying to penetrate its malice. Knowledge naturally gives pleasure and in itself is not sinful. But it is dangerous to think about some sins, about sins of lust, or revenge, for example, and on account of the danger it is wrong to think about sins of the flesh without good reason. Thinking about such sins with good and sufficient reason is not sinful, for the danger of sin is not sin and it may be neglected for sufficient cause; if there is not sufficient reason and the danger of consent is small, it will be a venial sin; if the danger of consent be proximate and the matter grave, the sin will be mortal.

4. Morose pleasure in certain definite sins of one's past life has for its object the sins as they were actually committed with all their circumstances, and so it will be infected with all the malice of the circumstances. Morose pleasure in past sins is thus similar in its malice to evil desires, and on this account obtains the special name of "joy" in theology. A penitent who has been guilty of this sin should say what sins they were whose remembrance gave him pleasure.

5. Those who are not yet married and those who have been married may not take pleasure in the thought of what is allowed to married people, for in practice such pleasure cannot be confined to the intellect; it also excites the sensual appetite and this causes temptation and sin.

6. It is not sinful to take pleasure in a good result which followed from some evil, as for example, in the good results of a war or of a revolution. We may lawfully rejoice in the death of some one who was causing great harm to public morality, or to the public good in general, not precisely because he is dead, but for the reason that the cause of public harm is removed. We prefer the public good to the good of the individual, especially if he is doing harm. In this connection mention may be made of certain propositions condemned by Innocent XI of which the following is a specimen: "It is lawful for a son to rejoice that he killed his father in a drunken fit on account of the great wealth to which he has thereby succeeded." It is obvious that such joy is morally wrong, for the act of parricide was at any rate materially wrong even when committed while drunk, and joy on account of what was and is wrong is unlawful; nor does succession to the father's wealth, a good of a lower order than human life, especially a father's life, furnish a just cause for such unfilial rejoicing.

7. As it is unlawful to take pleasure in evil, so it is sinful to entertain voluntary sadness on account of good. To be sorry, therefore, for what is good and matter of precept, is a mortal or a venial sin according as the precept binds under mortal or venial sin; and so a reprobate sins grievously who laments the years that he spent in leading

a virtuous life. Even though the good be not matter of precept, as for example, the vows of religion, it is irrational and at least venially sinful to be sorry for having taken them; it will be grievously sinful if it leads to the danger of transgressing them.

On the questioning of penitents concerning bad thoughts, see Genicot, 1, n. 175.

CHAPTER II

THE CAPITAL VICES

THEOLOGIANS divide the chief vices to which human nature is subject into seven heads or capital sins, as they are called. The name implies that they are the source and origin of many more, inasmuch as the inordinate love of any temporal good is apt to give rise to many inordinate ways of pursuing it. The seven capital sins are: Pride, Covetousness, Lust, Anger, Envy, Sloth, Gluttony.

1

On Pride

1. Pride is the inordinate love of our own preëminence. There is a tendency deeply seated in human nature, which arises from the self-love which is innate in every man, and which leads him to prefer himself to others, to wish to lord it over them, and to bear with impatience the yoke of subjection to authority. Truth requires that we should look upon any qualities and gifts that we possess as coming to us from the bounty and goodness of God, and as giving us no right to exalt ourselves above others who have received similar or even greater benefits from the generosity of our common Father. Pride, on the contrary, would willingly close its eyes to this salutary and humbling truth; it looks upon whatever it possesses

as its own, as the fruit of its own labor and merit; it is prone to magnify its gifts, and to consider them to be greater than they really are, while on the other hand it is blind to the good qualities of others. This leads to the growth of a spirit of independence which is impatient of subjection to any authority, human or divine, and to a depreciation and contempt of others. The proud man has no need to ask God for anything; he thanks Him that he is not as the rest of men; he is self-sufficient, and independent of all the world. This is the pinnacle of pride, the inordinate love of one's own preëminence.

Consummate pride, which refuses to be subject to God and to lawful authority, and which looks down upon other men with profound contempt, is a mortal sin. If it does not go to these lengths, but merely magnifies self without grave insubordination and contempt of others, it is a venial sin.

Pride is so serious an evil because it strikes at the root of the primary obligations of reverent obedience towards Our Lord God and love of our neighbor, because it is opposed to the truth, and because of its universality; it is in the heart of every man and quickly grows to fearful dimensions unless corrected and subdued.

2. To pride is opposed humility, the virtue which occupies the mean between the two extremes of pride and pusillanimity, or mean-spiritedness. The mean-spirited man refuses to take the place for which his talents fit him, and which God intends for him. He puts himself beneath his equals and inferiors to the detriment of his dignity and office; he is afraid to exercise the authority entrusted to him, and the public good suffers in consequence. Humility, on the other hand, keeps a man in his place both

with respect to God and his fellowmen. It is grounded on the knowledge of God and of self; the humble man knows and acknowledges that he has nothing but what he has received from God, that he is utterly and entirely dependent on God every moment of his life, that if left to himself he will fall into the lowest depths of sin and degradation; and this knowledge causes him to think much of God and little, very little of self. This is the virtue so much recommended by our divine Lord, "Learn of Me, because I am meek and humble of heart." [1]

Pride leads to many other vices, among which are: presumption, ambition, vainglory, boasting, and hypocrisy.

a. Presumption is the inclination and wish to undertake what is above one's capacity. Ordinarily it is a venial sin, but it will be mortal if it is the occasion of serious harm to the cause of God or our neighbor.

b. Ambition is the inordinate striving after dignities and honors. The inordinateness consists in striving after honors to which one has no just claim, or greater than one's due, or by unlawful modes and means, or with too great eagerness. Apart from such inordinateness it is not sinful to seek after honors and dignities, as these belong to the class of things that are in themselves indifferent; it is a meritorious act to seek with moderation after dignities and honors in order thereby to be able to do more for God and one's fellowmen. "If a man desire the office of a Bishop, he desireth a good work." [2] Such an act belongs to the virtue of magnanimity. Ambition is commonly a venial sin, but it becomes mortal when it is the cause of serious harm, or when the means employed to attain its end are grievously sinful.

[1] Matt. xi. 29. [2] 1 Tim. iii. 1.

c. Vainglory is the inordinate striving after the esteem and praise of men. It is not wrong but praiseworthy to seek after and preserve a good reputation, which, as Holy Scripture teaches, is better than great riches.[1] But inordinateness, vanity, and sin, come in when the esteem and praise of those men is sought whose esteem is not worth having, or when esteem is sought for what does not deserve esteem, or not so great as is sought after, or when glory is not referred to the proper end. It is usually a venial sin, but may become mortal in the same way as ambition.

d. Boasting is the inordinate bragging about one's own good qualities, or gifts, or even about what is sinful. If the inordinate display is in action rather than in word it is called ostentation.

e. Hypocrisy is the feigning of virtues and qualities that one does not possess.

2

On Covetousness

1. Covetousness or avarice is the inordinate love of wealth. It is not sinful to value and seek after money in moderation, but the love of money becomes inordinate when it causes a man to be too close and niggardly in spending it, too eager and absorbed in acquiring it, and ready to do what is wrong in order to come at it.

It is of itself a venial sin, but it becomes mortal when it leads to the transgression of a precept which binds under grievous sin. Although it is of itself only a venial sin, yet it is very dangerous because of man's proneness to it, and because the vice is apt to grow fast by what it feeds upon,

[1] Prov. xxii. 1.

until it becomes mortally sinful. Holy Scripture frequently condemns it and warns us against it.[1]

2. Covetousness is opposed to liberality by defect, while prodigality is opposed to liberality by excess. Liberality is the virtue which moderates the love of wealth and inclines us to spend it well, according to the dictates of right reason. Prodigality inclines a man to squander his wealth on unworthy objects, or to give more than he should do, so that he is not able to live according to his state of life, or he is unable to fulfil his obligations, or he reduces his family to beggary.

3

On Lust

Lust is an inordinate appetite for the pleasure which has its seat in the organs of generation. A wise and provident Creator has taken care that those actions which are most necessary for the individual or for society should be accompanied by great pleasure in order that they may be exercised more certainly and more readily. If there were no pleasure connected with eating and drinking, few men would trouble themselves about those necessary actions. The great pleasure felt in the act of procreation induces men to do what is necessary for the preservation of the race which otherwise would excite only shame and disgust. This, however, can only be done lawfully in wedlock. It is lawful then, according to the rules of married life, for husband and wife to indulge in venereal pleasure; outside marriage it is inordinate and sinful.

Any act of wrongful indulgence in venereal pleasure by

[1] 1 Tim. vi. 9, etc.

those who are not married is grievously sinful if directly sought for or to which deliberate consent is given. But the fuller treatment of this subject must be left till we come to the Sixth and Ninth Commandments.

4

On Anger

1. Anger is the inordinate appetite for revenge.

Revenge is the infliction of pain in satisfaction for an injury. As private individuals we are not allowed to avenge injuries which have been done us: "To no man rendering evil for evil. . . . Not revenging yourselves, my dearly beloved, but give place unto wrath, for it is written: Revenge to Me; I will repay, saith the Lord." [1] Sometimes, however, in trivial matters the immediate punishment of an injury is allowed to private persons, in order to prevent a recurrence of the injustice, or under circumstances in which such an action is really an act of self-defence. In other cases private revenge is not allowed, but belongs to those whose duty it is to correct delinquents, and to avenge outraged justice. Anger, then, will be inordinate whenever revenge is sought without just cause, or more severe than the cause requires, or when private vengeance is indulged in, or when it is sought merely to satisfy hatred and spite. In these cases anger is of itself a grave sin because it is against justice and charity; if there be merely want of moderation in the manner of seeking or executing lawful vengeance, the sin will be venial.

2. To be angry in moderation for a just cause is not sinful: "Be angry and sin not." [2] Sin may even be com-

[1] Rom. xii. 17. [2] Eph. iv. 26.

mitted through defect of anger, as when a parent or superior is never moved to anger against the faults of children or subjects, but permits them to go unpunished to their loss and the public inconvenience.

3. The daughters of anger, or the sins which spring from the same root are: indignation and the swelling of passion, blasphemy, imprecation, quarrelling, and contumely; fighting, sedition, striking, and wounding; which are for the most part treated of in other chapters, or present no difficulty.

Contumely is an insulting word or gesture said or done in order to dishonor our neighbor. It is against charity, and of itself is a mortal sin except when the matter is trivial. A superior may, however, with moderation and caution treat a subject contumeliously, not in order to dishonor him, but to correct or humble him. Chaffing another about his foibles for the sake of recreation is not sinful unless it goes too far, and provokes to anger or cuts too deep.

5

On Envy

Envy is sadness on account of another's good, inasmuch as it is regarded as lessening one's own. It is directly opposed to charity, which inclines us to rejoice in the good of our neighbor, and is mortally sinful if the matter is serious. We must carefully distinguish envy from various other dispositions which bear some resemblance to it. Thus, if one is sorry because another has obtained something desirable, thereby making it impossible for himself to obtain it, it is not envy but emulation, which in itself is praiseworthy. Sadness because another has obtained a

post of influence of which he is unworthy, is not envy nor sinful. In the same way, if one is sad because his enemy has obtained the means of doing him harm, there is no sin in such a disposition. Envy comes in where an equal, or one who is not much more than an equal, rises in position, power, or influence, and his rise is regarded with ill will because it seems to lower one's self.

The ambitious are usually also envious, inasmuch as they see others enjoying what they wish to have for themselves. The mean-spirited, too, are commonly envious, since they look upon trivialities as matters of great importance, and the promotion of others, especially of the young, as a lowering of themselves.

6

On Sloth

Spiritual sloth is a sluggishness of the soul in the exercise of virtue. If the reason for the sluggishness is the labor and difficulty which accompany the practice of virtue, sloth will be a mortal sin whenever on account of it a grave precept is violated; otherwise it will be a venial sin. If sloth makes the friendship of God tedious and irksome because of the trouble it takes to preserve it, it is a mortal sin, inasmuch as it is directly against our obligation of loving God with our whole heart.

7

On Gluttony

1. Gluttony is the inordinate indulgence in food or drink. The use of food and drink should be regulated by temperance according to right reason. As a standard

right reason will be guided by the necessities of bodily health and strength interpreted in a wide sense, and the uses of the society in which one lives. Inordinateness will come in if through appetite we anticipate the proper time for taking refreshment, or demand too exquisite dishes, or indulge in excess, or devour our food voraciously, or require too great care in the preparation of food, paying a *chef* as much as all the other servants put together.

2. Gluttony is of itself a venial sin, but it becomes mortal if it leads to violating precepts, such as those of fasting and abstinence, which bind under grave sin, or if it seriously injures health, or if it makes a man unfit to pursue his ordinary avocations, or if eating and drinking become the end for which a man lives, whose God is his belly,[1] or if it causes complete loss of reason through drunkenness.

3. Complete drunkenness which deprives a man of the use of reason so that he cannot distinguish between what is right and wrong is a mortal sin, for St. Paul numbers it among those vices which exclude from the kingdom of God.[2] The malice of this sin does not consist merely in the depriving one's self of the use of reason, for it is allowed to do that for a good cause, but in the depriving one's self of the use of reason in such an unnatural way by the inordinate use of drink for a considerable time during which the recovery of the use of reason is out of one's power, and without any just cause. Theologians more commonly teach that if there were a sufficient cause, it would not be morally wrong to make a man drunk as a substitute for the use of chloroform, or in order to counteract the effect of poison.

[1] Phil. iii. 19. [2] Gal. v. 21.

To drink to excess but not so as to be perfectly drunk is only a venial sin *per se*, but it may become mortal on account of the serious harm done thereby to one's own health, or the spending in drink of money which is required for the support of one's family or the payment of one's creditors, or on account of grave scandal caused by such a sin, or on account of other sins to which it gives rise.

4. If a man could be prevented from committing a more serious sin, as murder for example, in no other way except by making him drunk, many theologians teach that this would not be unlawful. For very probably I may induce another who is determined to commit some grave crime to be content with doing something which is less bad. Under such circumstances, to persuade another to do what is a less evil is a good action.[1]

5. Bad actions committed in drink are imputable to the agent if they were foreseen in some confused way, for they are voluntary in their cause. The same must be said of blasphemy, indecent language, and other sins of word which retain their objective malice even when said by a drunken man. Mere abuse of others, inasmuch as nobody cares what a drunken man says, would not be sinful. However, when sins in word are committed in drink, there is something wanting to them for their full and proper signification, and so, if blasphemy, for example, were punished by ecclesiastical censure or reservation, these would not be incurred for blasphemy uttered while drunk.

6. Morphia may be given to ease pain, and brandy to strengthen a sick person, even though they cause loss of reason. This follows from what has been said, and from the principle of a double effect. It is not lawful to ad-

[1] St. Alphonsus, 2, n. 57.

minister such medicines in order to deprive a dying man of the use of reason, so that he may die while unconscious. The time just before death is very precious; a sinner may then be reconciled with God and save his soul; one who is in the state of grace may very much increase his merit by a good use of that time. Euthanasia then, in this sense, is unlawful; it is virtually shortening a man's life.

7. The terrible evil of drink should be combated by all the means, spiritual and temporal, which are at the disposal of the Christian. The general means which may be used are especially the frequent reception of the sacraments, the avoiding of dangerous companions and the occasions of sin, the cultivation of modes of taking innocent recreation while not at work either at home or outside, the joining of Catholic temperance societies whose members encourage each other by mutual example, and the taking of the pledge if its nature and obligations be properly understood.

BOOK V

ON THE THEOLOGICAL VIRTUES

FAITH, hope, and charity are called theological virtues because they relate immediately to God, having God for their material and formal object. They thus hold the first place among the Christian virtues; they are of the greatest importance, are most meritorious; and sins against them are the most grievous. In moral theology the acts belonging to these virtues and the sins opposed to them are treated of; the treatment of the virtues is reserved to dogmatic theology.

PART I

ON FAITH

CHAPTER I

THE NECESSITY OF FAITH

1. FAITH is here understood in the sense in which it is used by the author of the Epistle to the Hebrews,[1] and elsewhere in Holy Scripture. It is an act of the intellect assenting to the truth of a proposition, not because it is evident to reason, but because its truth is vouched for by some one who knows and whom we can trust. The word has this sense among others in English. We say: "I

[1] Heb. xi.

should not like to pin my faith to such a proposition on that writer's authority." Here there is question of human faith resting on human authority. God can manifest the truth to us, and we believe that He has done so. "God, who at sundry times and in divers manners, spoke in times past to the fathers by the prophets, last of all in these days hath spoken to us by His Son." Whatever God makes known to us mediately or immediately we are justified in believing on His authority. He can neither deceive us nor be Himself deceived; and we are bound to believe all that we know God to have spoken or revealed, otherwise we implicitly accuse God of lying or of ignorance. An act of divine faith, then, is an act by which we believe whatever God has revealed on the authority of God Himself. God has taken care that we should know for certain what He has revealed in times past for man's benefit and guidance by founding the Catholic Church. The Catholic Church is the pillar and the ground of truth, whose chief function it is to bear witness to God's revelation, and to teach it to all men even to the consummation of the world. God's Holy Spirit, the Spirit of Truth, ever abides with the Church, to enable her faithfully and infallibly to perform her task. Faith, then, considered as a habit, is a theological virtue by which we believe all that God has revealed and the Church proposes to our belief on the authority of God Himself. An act of faith is an act of this virtue.

2. God has destined us for a supernatural end of eternal happiness, consisting essentially of the beatific vision of Himself, as we know from revelation; He wishes that we should, as rational and free beings, work consciously for the attainment of that end. We cannot do this without believing in God and without believing that He is a rewarder

of those who do well, and a punisher of those who do ill; faith, then, is the necessary foundation of the Christian life. "Without faith it is impossible to please God. For he that cometh to God, must believe that He is, and is a rewarder of them that seek Him."

Faith is then necessary for salvation, not merely because it is of precept like the Commandments, but because it is a necessary means to attain the supernatural end to which we are destined by God. Without taking the necessary means the end cannot be attained. Those, then, who have come to the use of reason, so that they can know God and know what He has revealed, are bound to make an act of faith; otherwise they cannot be saved. The habit of faith is infused into the soul together with sanctifying grace at the reception of baptism, and this habitual faith is sufficient for such as have not the use of reason, like children or those who have always been insane.

3. Our act of faith must implicitly extend to everything that God has revealed; we cannot accept some articles on His authority and reject others which are vouched for by the same authority. But it is not sufficient to make an act of implicit faith comprising all that God has revealed. We are bound to know and believe certain revealed truths explicitly. Some of these truths must be believed explicitly as a necessary means to salvation; explicit belief in others is only of precept, and the want of it, if inculpable, will not be a bar to salvation. Explicit belief in the existence of God, the rewarder of them that seek Him, is necessary for salvation, and probably also belief in the mysteries of the Blessed Trinity and the Incarnation. Explicit belief in these mysteries is certainly of precept.[1] A Christian is

[1] Props. 22, 64, condemned by Innocent XI.

bound also to know and believe the substance of what is contained in the Creed, the sacraments which are of obligation, the precepts of God and of the Church, and the Lord's Prayer. It is sufficient to have implicit faith in other truths of revelation.

4. It is not sufficient to have believed the necessary articles of the faith once in a lifetime. Our acts of faith must be frequently renewed; we must lead lives of faith, according to the divine precept.[1] This divine precept is sometimes of obligation *per se*, as when the truths of revelation first become known to a man, and he becomes conscious of his obligation; sometimes it is of obligation *per accidens*, as after a sin against the faith has been committed, or when a duty has to be fulfilled which requires an act of faith. However, for such as have once made their act of faith, it will be sufficient in order to fulfil the divine precept, if the act of faith is renewed implicitly, as is done whenever we pray, assist at Mass, or receive any of the sacraments. It is well, however, especially in these days of unbelief, to renew frequently explicit acts of faith according to the wish and practice of the Church. They are acts of very great merit with God.

[1] Props. 16, 17, condemned by Innocent XI.

CHAPTER II

THE EXTERNAL PROFESSION OF THE FAITH

1. We do not fulfil our duty as Christians and Catholics if we keep our religious faith concealed within our own breasts. Our duty to God, to our neighbor, and to ourselves sometimes requires that we should make open profession of the faith which we hold. When our public profession of the faith would render great honor to God, or prevent great dishonor being shown Him, or prevent the true religion from being publicly despised and contemned, we must, even at the risk of great temporal loss, boldly come forward and proclaim our religious belief. We must be ready to do the same if our example would gain others to God, or prevent them from falling away from Him; for charity towards our neighbor sometimes requires that we should sacrifice our temporal interests for the spiritual good of others. Again, if we never made open profession of our faith, there would be grave danger of its becoming weak and altogether dying away; so we must sometimes perform external acts of our religion in order to keep the faith alive within us. The necessity of doing this is shown by the gradual falling away from their religion of Catholics who have no priests, and no churches wherein to practise their religious duties.

2. The positive law of the Church requires that a solemn profession of faith be made by those who are about to be

baptized, or received into the Church, or at least in their name if they are unable to make it for themselves; by priests at their ordination and by Bishops at their consecration; and moreover by all Patriarchs, Primates, Archbishops, and Bishops, in the first provincial synod which takes place after their promotion to their office. A solemn profession of faith is also required from Vicars General, from Canons after their nomination in the Chapter, and again within a period of two months before the Bishop; from rectors of churches and from all who are entrusted with the cure of souls; from professors of theology and philosophy in seminaries and colleges.[1]

NOTE. — A question arises regarding the pastors in the United States, whether they are bound to make the solemn profession of faith. Smith in his Elements of Ecclesiastical Law, vol. 1, n. 664, makes a distinction between removable and irremovable pastors. The latter, according to this author, seem bound to make this profession; while in regard to the former the obligation is doubtful, some denying, others affirming the obligation. Even the obligation for the irremovable pastors in the United States may be fairly called in question. The decree of the Council of Trent relating to the subject is as follows: "*Provisi de beneficiis quibuscumque curam animarum habentibus teneantur a die adeptæ possessionis, ad minus intra duos menses, in manibus ipsius Episcopi, vel, eo impedito, coram generali ejus vicario, seu officiali, orthodoxæ fidei publicam facere professionem, et in Romanæ Ecclesiæ obedientia se permansuros spondeant ac jurent.*" (Sess. 24, c. 12.) This decree, it may be noted, is not necessarily to be applied to the United

[1] 1 West. d. 9.

States, since according to the more probable opinion we have neither benefices nor parishes, strictly so called, in this country. Cf. Putzer, Apost. Facult. (5th ed.), p. 172, 173. There have been indeed various decrees of the Holy See since the Council of Trent bearing on the question, but they do not appear to refer to countries where, like the United States, there are no parochial benefices or parish priests in the strict sense. There may be an obligation *jure particulari* for pastors to make this profession, such as is set forth in the First Synod of Westminster for England, but there is no evidence of any particular law of this kind for the United States. — END OF NOTE.

3. It is gravely sinful to deny the faith, or to do or say anything which is equivalent to a denial of it, or which shows that we are ashamed of it. "For he that shall be ashamed of Me and of My words, of him the Son of man shall be ashamed, when He shall come in His majesty, and that of His Father, and of the holy Angels." [1] However, the obligation of professing the faith is affirmative, and so always binds but not for always. In other words, we may never deny the faith, but we are only bound to profess it openly when the divine, or natural, or positive law require it. A man might travel for months among heathen or heretics without making his faith known to any one. As a rule it is better openly to profess one's religion so that all may know that we are Catholics; but under certain circumstances it might be lawful to conceal one's conversion to the faith for a time.

A Catholic who on being asked denies that he is one does not necessarily deny the faith. Such an answer might

[1] Luke ix. 26.

merely be a fitting reply to an impertinent question. It will, however, be a denial of the faith when the circumstances require that an open profession of it should be made. A Catholic who flies from persecution, or disguises himself, or eats meat on days of abstinence in order to avoid detection, does not thereby deny the faith. It is better never to enter non-Catholic places of worship, or be present at non-Catholic religious functions, and this is of obligation whenever such acts would be interpreted as countenancing a false religion, or as showing a spirit of indifferentism, or whenever there would be scandal or danger of perversion, or whenever lawful authority forbids them. Otherwise, merely to enter an heretical place of worship, or to be present at a non-Catholic religious function, such as a burial or a marriage, without taking part in the ceremony, is not sinful, and may be permitted for a good cause.

4. All communication with non-Catholics in their religious rites and ceremonies is as a rule forbidden to Catholics. To take part in such rites and ceremonies is to take part in a form of religious worship which is not approved by God and by the Church; it is a virtual adhesion to a false form of worship, or it shows approbation of it. A Catholic, then, may not act as a sponsor in a non-Catholic baptism, or take an active part in a non-Catholic marriage or funeral. On certain rare occasions, as when in danger of death and a Catholic priest cannot be had, a Catholic may accept the ministrations of a schismatic or heretical priest, as was done by some Catholic Japanese officers who were captured by the Russians and shot in the Russo-Japanese War.

Inasmuch as heretics and schismatics are excommunicated. the Church forbids prayers, suffrages, or Masses to be publicly offered for them.

5. Experience shows that very little good and much harm may come from disputes and controversies about religion. Ordinarily such disputes leave the parties concerned more obstinate than ever in their convictions. Grave scandal too and great dishonor to God result from the public and contemptuous denials of sacred truths and the ridicule thrown on them in the heat of controversy. The mind of the Church is that, as far as possible, and except for the necessary defence of the faith, such disputes should be avoided whether they be public or private.

CHAPTER III

SINS AGAINST FAITH

THE chief sins against faith are infidelity, heresy, and apostasy.

1. All who have sufficient knowledge of the Gospel are bound to embrace and believe it: "He that believeth and is baptized shall be saved; but he that believeth not shall be condemned." [1] A grave sin, then, is committed by one who rejects the faith when it has been sufficiently made known to him with adequate grounds for believing, and this grave sin is called infidelity. This positive infidelity is distinguished from privative and negative infidelity. One who has the opportunity of knowing the faith, and recognizes the obligation of making inquiries about it, but neglects to do so, commits the sin of privative infidelity. This is also a grave sin if the degree of negligence be grave. One who has no opportunity of learning the faith, or who does not advert to the obligation of making inquiries, is in negative infidelity. This is not sinful, but St. Thomas [2] teaches that it is the penalty of sin, inasmuch as if a man were faithful to the light that he has in natural reason, God would take care that he should have an opportunity of knowing the faith, even if it were necessary to send him a special messenger, or an angel from heaven, to make the

[1] Mark xvi. 16. [2] De Verit. q. 14, a. 11, ad 1.

Gospel known to him. If, then, the Gospel is not preached to every man, not God but men are to be blamed for it.

2. Heresy is the rejection by one who has embraced the faith of some portion of revealed truth which is proposed by the Church for our belief. If the rejection is voluntary and accompanied with full knowledge that what is rejected is proposed by the Church as an article of faith, the heresy is formal. Otherwise it will only be material.

It is not heresy, though sinful, to reject what is known to have been revealed by God in a private revelation; private revelations are not proposed by the Church for our belief. Nor is it heresy, but disobedience, to reject what is proposed by the infallible authority of the Church for our acceptance, but which forms no part of divine revelation. One who denied that a canonized saint is in heaven would not be a heretic, but he would be disobedient to the Church who assures us with divine authority that he is in heaven, and bids us honor him as a saint. Formal heresy is committed not only by knowingly and wilfully rejecting a revealed truth which is proposed for our belief by the Church, but by wilfully doubting about such a revealed truth. For such a one positively doubts whether a portion of God's revelation is true, and thereby injures Him as much as if he asserted that it was untrue. Similarly one who would not submit to the Church's decision, even if she defined some doctrine to be of faith, is a formal heretic. Negative doubt, by which assent to a revealed truth is withheld or suspended, and voluntary ignorance of the true Church or of other necessary truths of faith, are sinful, but they do not constitute formal heresy. Great numbers of baptized Christians who were born of schismatical and heretical parents, and who do not know the true Church,

are material, not formal heretics. When they begin to doubt about their position, and advert to the obligation they are under of making inquiries, they sin against the faith, more or less grievously according to their negligence, if they remain as they are. They do not become formal heretics until the truth fully dawns upon them, or they are so disposed that they would not submit to the Church even if they knew that she alone is the true Church of Christ.

3. Heresy is punished by the Church as a crime which attacks the foundations and the very *raison d'être* of her existence. In order to incur the penalties inflicted on heresy, the sin must be both formal and external, for the Church in her external forum does not take cognizance of sins of thought. The external act must be such as of its own nature, or from custom, or from the special circumstances, is held sufficient to manifest an heretical mind. The reception of the sacrament in an Anglican church, or being married in a non-Catholic place of worship by a non-Catholic minister, are considered acts of heresy and punished as such by excommunication.

A special form for the reception of converts into the Church, based on various Roman decrees, has been approved by the English Bishops.

4. Apostasy from the faith is the grave sin committed by one who throws the faith overboard entirely. The apostate not only rejects special dogmas like the heretic, but wholly abandons the Catholic faith, and becomes a freethinker, atheist, materialist, Mahomedan, Buddhist, etc.

Part II

ON HOPE

CHAPTER I

THE NATURE OF HOPE

1. An act of hope is an act of the will by which we desire the possession of God and of heaven, and firmly trust that we shall obtain them together with the necessary means through the goodness of God and God's fidelity to His promises. The material object, then, of hope is God, heaven, and the supernatural helps necessary to attain thereto. The formal object is God's infinite goodness towards us, His omnipotence, and His faithfulness to His promises. God is infinitely good and wishes us to be happy with Him forever; He has promised that we shall be happy with Him if only we persevere to the end. He will enable us to do this by His all-powerful grace.

2. Hope is necessary for salvation for all who have come to the use of reason. The sinner must hope in order to ask for pardon, and to be able to rise from his sin. The just man must hope, otherwise he will not pray, and without prayer it is impossible to persevere in the grace of God. Hope is also matter of precept, which obliges sometimes *per se*, at other times *per accidens*, in much the same way as the precept of faith. Explicit acts of hope, however, are not necessary in order to fulfil this precept; what was said above about the acts of faith is applicable to acts of hope. Implicit acts contained in prayer, the reception of

the sacraments, and other works of piety are sufficient to fulfil the obligation. Nobody, then, who is complying with the ordinary obligations of a Christian life need be anxious whether he is fulfilling the precept of eliciting acts of the theological virtues; but it is well, as a matter of counsel, to renew them frequently and explicitly.

3. The chief sins against hope are despair, presumption, and aversion for God and heavenly things.

Despair is a voluntary diffidence about obtaining heaven and the means necessary thereto. If it arises from mistrust of the goodness, power, and fidelity of God, it is gravely injurious to Him, and is always mortally sinful. In an improper sense, despair sometimes springs from an overpowering idea of one's own weakness and fickleness, and then it is frequently only venially sinful; it is not directly against hope, but rather a failure to make use of the motives to encouragement which hope furnishes.

Presumption here signifies a sin against hope by excess, and is an inordinate confidence in the attainment of heaven without using the necessary means. It is of itself a grave sin, but admits of parvity of matter, as when through such inordinate confidence one commits venial sin.

Aversion for God and heaven is distinguished from hatred of God, which is directly against charity, in that it does not wish evil to God, but prefers earth and earthly joys to God and heaven. It is, as is obvious, a mortal sin.

Part III

ON CHARITY

CHAPTER I

THE NATURE OF CHARITY

1. Charity, as treated of here, is an act of the will by which we love God for His own sake above all things, and our neighbor for the sake of God. The love of charity, then, is different from the love of concupiscence, by which we love God as our reward exceeding great, and desire to possess Him in whom our supreme and perfect happiness is placed. This love of concupiscence is good and belongs to the virtue of hope, but it is imperfect. By charity we rise above the consideration of our own reward and happiness; we see in God the infinite Good, the Source and Origin of all good, and we rejoice in His Infinite Perfection. We wish Him all honor and glory and every good, and desire, as far as we can, to obtain it for Him, because He is infinitely worthy of our whole-hearted devotion. So that the formal object of charity, the reason why we love God, is His own infinite goodness and worth; for this reason we love Him and our neighbor, for such is His will. He has made us all in His image and likeness; all rational creatures form the great family of God, our common Father; all are capable by grace of eternal happiness with Him in heaven.

2. The most intimate union with God by charity is the end for which we were created, and it is our duty to prepare ourselves for this high destiny by exercising ourselves in charity while on earth. It is the highest and the noblest of virtues, the queen of all the virtues, the seal and bond of human perfection. That we might cultivate charity all the more assiduously God has commanded it in express terms: "Thou shalt love the Lord thy God with thy whole heart, and with thy whole soul, and with thy whole mind. This is the greatest and the first commandment. And the second is like to this: Thou shalt love thy neighbor as thyself." [1] We are bound, then, to love God above all other things, to cling to Him, come what may, never to allow ourselves to be separated from Him by sin, for: "He that hath My commandments and keepeth them, he it is that loveth Me." [2] If we do this, we need have no scruples about our charity; even though we seem to have a tenderer feeling for husband, child, or friend than for God, we may call to mind that charity belongs essentially to the will; if our will is firmly fixed on God, so that we are prepared to suffer the loss of anything rather than of God, we substantially fulfil the greatest of the precepts, on which the law and the prophets hang.

All rational beings that are capable of friendship with God, and of becoming His children by grace, are to be loved for the sake of God in charity. This love of charity towards our fellowmen does not exclude love for them as friends or relatives. Love of others for any honest motive is good and praiseworthy, and may by being supernaturalized become supernaturally meritorious with God. By the precept of charity towards our neighbor we are bound

[1] Matt. xxii. 37. [2] John xiv. 21.

to wish well to all, to pray for all, never to allow ourselves any thought, word, or deed which is incompatible with mutual love, and we are bound to help others in their necessities as far as we can.

3. As charity is the queen of all the virtues, it binds of itself under pain of grave sin, but when the matter is light the sin will be only venial. Sins, then, against charity are grievous of themselves, as we shall see while treating of them separately.

We are bound sometimes to elicit acts of charity, but, as we have already seen, it is very difficult to determine exactly how frequently. Nor is it necessary to attempt the task, for implicit acts such as are contained in a devout recital of the Our Father, sorrow because God is continually being offended by sin, pious meditation on the Passion of Christ, suffice for the fulfilment of the obligation. We must not suppose that it is difficult to love God with the love of charity, for God has commanded it, and His infinite love towards us and the desire He has of being loved by us in return prompt Him to give us abundant grace to enable us to comply with His precept. By becoming bone of our bone and flesh of our flesh in Jesus Christ, God has made it especially easy for us to love Him, inasmuch as it is easy for us to understand and to appreciate the infinite tenderness and loveliness of the Sacred Heart of Jesus. It is of such great merit that an act of perfect charity at once blots out all sin, and reconciles the sinner with God.

CHAPTER II

WELL-ORDERED CHARITY

1. The law of charity is not fulfilled by a general and equal esteem for all mankind. Such a vague and general regard for others would probably be inoperative, and charity is above all things active. Charity, then, to be genuine must be well ordered and discriminating. It must look at the claims which others have on our charity; it must appreciate things at their true value, otherwise in wishing to confer a favor it will do harm to the object of love; it must assist others wisely according to their necessity, otherwise it will foster hypocrisy and produce professional and able-bodied beggars. In other words, as theologians teach, the order of charity has reference to the persons who claim our love, to the advantages which we desire to procure for them, and to the necessity in which they are placed.

2. God, the fountain and reason of charity, the infinite source of all good, has the first and highest claim on our love. "He that loveth father or mother more than Me is not worthy of Me; and he that loveth son or daughter more than Me is not worthy of Me."[1] Next to God we must love ourselves with that genuine charity which makes one's own salvation the first great duty of every man — "For what doth it profit a man if he gain the whole world,

[1] Matt. x. 37.

and suffer the loss of his own soul?" [1] We are never justified, then, in committing the slightest sin for the love of any one or any thing whatsoever.

Neither must we without good cause expose ourselves to the proximate occasions of sin. If duty demands it and if proper precautions be taken, we may confidently trust in the protection of God, and expose ourselves to risk for the sake of our neighbor. We may too forego a small spiritual advantage which is not matter of precept for the sake of our neighbor. Moreover, we are sometimes called upon to sacrifice our own good of a lower order for the higher good of our neighbor. In this connection we may distinguish a triple order of goods, those which pertain to the salvation of the soul; the intrinsic and natural goods of soul and body, consisting in life, health, knowledge, liberty, etc., and extrinsic goods consisting in reputation, wealth, etc. Theologians also distinguish three degrees of necessity in which one in need of charity, spiritual or temporal, may be placed. If he is in danger of damnation or of loss of life, or of other good of almost equal importance, and can do nothing to help himself, he is said to be in extreme necessity. If he is in similar danger but can do something to help himself though not without grave difficulty, he is in grave necessity. Ordinary sinners and beggars who can help themselves without grave difficulty are in common necessity.

3. Every man, as far as he can, is bound to help his neighbor in extreme spiritual necessity even at the cost of his own life: "In this we have known the charity of God, because He hath laid down His life for us; and we ought to lay down our lives for the brethren." [2] However, we do not lie under so serious an obligation unless the spiritual

[1] Matt. xvi. 26. [2] 1 John iii. 16.

necessity of our neighbor is certain, the prospect of our being able to render effective help is equally certain, and no help is forthcoming from elsewhere. Neither should we be bound to risk our lives in order to help another in extreme spiritual need if greater harm would follow from our making the attempt. So that it is not often that ordinary people are bound to expose their lives to fulfil this obligation of charity; the obligation more frequently presses on Bishops and priests who have the cure of souls, and who are bound to execute their charge in justice as well as in charity. These are bound to expose their lives for their flock not only in extreme but also in grave necessity.

Except in the case of extreme spiritual necessity we are not bound by the precept of charity to risk life or limb, or expose ourselves to any serious inconvenience. The reason is because we are not bound to use extraordinary means and suffer serious inconvenience in order to preserve our own lives, and we cannot as a rule be bound to do more for our neighbor than we are bound to do for ourselves, especially as in grave or common necessity he can help himself. We might be obliged to do more for one whose welfare was of public importance. However, when our neighbor is in grave or even in common necessity, we must be prepared to undergo some inconvenience and trouble in order to help him. More precise rules on the subject will be given below.

It is a disputed question among theologians whether one is allowed to sacrifice his own life in order to save the life of another whose welfare is not of public importance. Many deny that it is lawful, for we should love ourselves in the first place when there is question of equal good; charity begins at home. Others, however, more probably teach that it may lawfully be done, and that it is an act of

heroic virtue; so that in yielding a plank to another in a shipwreck and permitting himself to be drowned, a man does not prefer the life of another to his own, but he sacrifices his life for the sake of virtue.

4. The more important spiritual goods of the soul should be the first objects of our solicitude, then the intrinsic goods of the soul and body, finally the extrinsic goods of reputation and wealth.

With the love of complacency which inclines us to show reverence, honor, and respect to others, we should give the preference to those who are more worthy of it on account of their closer union with God. The love of benevolence, on the other hand, leads us to prefer those who are nearer to us in sharing with them the goods which are specially due to them on account of their union with us. Although no absolute and universal rule can be laid down to guide us as to whom the preference should be given when we cannot help all, yet there is general agreement among theologians that the claims of our neighbor rank somewhat in the following order: wife, children, parents, brothers and sisters, other relatives, friends, domestics, those who live in the same place, country, and finally all others.

CHAPTER III

LOVE OF ENEMIES

1. Not even enemies and those who injure us are excluded from the law of charity; in spite of their ill will and malice they remain our neighbors, and Our Lord expressly bade us love them: "I say to you: Love your enemies; do good to them that hate you, and pray for them that persecute and calumniate you." [1] We are bound by this precept to put out of our hearts all ill feeling and desire of revenge against those who dislike and wrong us, and furthermore we are bound to show them those common marks of Christian charity which are due to all and may be refused to none. What those common marks of Christian charity are depends much on the usages of time and place, and of the society to which the parties belong. Those marks which are common to members of the same family are not due to outsiders; those which are mutually shown to neighbors of the same social standing are not due to utter strangers, or to persons in a lower social position. Among the common signs of charity which may be refused to none are reckoned the following: general prayer for all which we offer up when we say the Our Father, answering a question or returning a salute, selling in open market to all comers, refraining from excluding individuals from general invitations or general benefactions.

[1] Matt. v. 44.

It is not of precept but of counsel to show one's enemies unusual signs of forgiveness and charity. Such signs are: to pray expressly for an enemy in particular, to visit him, to console him in affliction, to treat familiarly with him.

2. In certain circumstances, however, we are bound to show even these unusual signs of charity to our enemy, as when they cannot be refused without scandal to others who will think that they are refused through hatred, or when they are required to prevent our enemy from falling into serious sin as, for example, by conceiving a deeper hatred for us. If a former friend asks our pardon for an injury which he has done us, and if the friendship was not a freely accepted union between us but was more or less required by our mutual relations, we must be ready to show him again unusual signs of charity. If the friendship depended merely on our mutual liking, there will be no obligation to show unusual marks of charity after receiving an offence; what was freely given may be freely withheld, always supposing that there is no ill will. We may for a time even refuse the common and ordinary signs of charity toward another for a good reason. A superior, for example, may do so in order to correct an inferior who has offended him. An equal may do so for a time immediately after receiving an offence while the injury is still rankling in his heart; to require not only repression of ill feeling, but the immediate exhibition of marks of charity for the offender would be to lay too heavy a burden on poor human nature. It may also be lawful to refuse the ordinary signs of charity for a time toward one who has offended us in lighter matters as a suitable punishment, and as a means of preventing a repetition of such offences in future.

3. When one who has offended us apologizes and asks

for pardon we are bound to forgive him and also at the proper time to show him the ordinary signs of charity. If, however, he has injured us, we have a right to compensation for the injustice, and charity does not compel us to forego our right. We may then require satisfaction for the injury, and even bring an action in a court of law to recover it against the wrongdoer, without, of course, indulging any ill will.

4. With a view to reconciliation between enemies, it is the duty of him who gave the offence to apologize and to ask for pardon, unless a position of superiority makes this inadvisable. As a rule it will not be necessary to make a formal request for pardon; satisfaction can usually be given to the offended party in a less formal way, and in a way that is less embarrassing to both parties. If both were in the wrong, the one who was most so, or the inferior, should be the first to seek reconciliation.

5. We sometimes find it difficult to associate with certain people; they try our temper; we can scarcely talk or think of them with patience. This is sinful, of course, if it is voluntary, and if it arises from ill will towards the person in question. It sometimes, however, comes not from ill will towards the person, but from incompatibility of characters and dispositions. We dislike in him some quality or mannerism, or something which we cannot precisely define. It is what theologians call the hatred of abomination, not of enmity, and it may be without fault, as when it leads us to fly his company not in order to wound his feelings, but to escape a trial of temper and probable unpleasantness.

To refuse the ordinary signs of charity so as not to speak to another, or to refuse to have anything to do with him

out of ill feeling, and to foster this for a considerable time, is of itself a grave sin. But in estimating the gravity of such a sin in practice, the cause and the strength of the ill feeling should be considered. If the refusal to have anything to do with another come from serious ill will it will be a grievous sin; otherwise it may be only venial, or if there be no ill will and a just cause, no sin at all.

CHAPTER IV

ON ALMSGIVING

1. Almsgiving is here taken in a wide sense for any of the corporal works of mercy by which our neighbor's necessity is relieved. Inasmuch as the law of charity binds us to help all who are in need as far as we can, almsgiving is obligatory by the law of nature. The obligation is frequently inculcated in Holy Scripture: "Defraud not the poor of alms," we read in Ecclesiasticus.[1] Our Lord in severe terms enjoined on his followers the exercise of the works of mercy.[2]

2. In order to measure as precisely as possible the gravity of the obligation of almsgiving, we must consider the necessity in which our neighbor is placed, and our ability to help him. We are only bound to help those who are in real need; we should be fostering idleness and hypocrisy, and squandering on unworthy objects what is sorely needed by others, if we distributed our alms to the unneedy.

Theologians commonly distinguish three degrees of necessity, as we saw in a former chapter. Extreme necessity is the condition of one who from want is in danger of death or some equally serious evil, and who can do nothing to help himself. If in similar circumstances he can, though with difficulty, do something to help himself, he is said to

[1] Ecclus. iv. 1. [2] Matt. xxv. 41.

be in grave necessity. Beggars and the indigent poor generally are in common necessity. These distinctions cannot be applied with mathematical accuracy; they are necessarily somewhat loose and vague, but they represent real differences which, broadly speaking, are capable of being appreciated without much difficulty.

With regard to the ability of him who is called upon to relieve the needy, theologians distinguish between what is necessary to support the lives of a man and his family, what is necessary to support one's position, and what remains over and above and is superfluous.

3. Except in the case of extreme necessity, which in ordinary circumstances is rare, there is no obligation to give alms out of what is necessary either for the support of life or position. Charity, as we have seen, begins at home, and it rather forbids us to prefer the needs of outsiders to our own and to the needs of our family. We are, as a general rule, only bound to give alms out of our superfluity, "That which remaineth give alms." [1] Some theologians maintain that this precept imposes an obligation of giving all one's superfluous wealth to the poor; but others hold that this is only of counsel, that the precept is a general one directed to all the rich, and that it will be fulfilled if each gives something of his superfluity so that the necessities of the poor may be relieved by the common contributions of all. How much must be given according to this opinion depends upon circumstances, and is better left to the judgment of a prudent man after due consideration of all the circumstances of the case.

4. When our neighbor is in extreme or almost extreme necessity we are under a grave obligation of helping him

[1] Luke xi. 41.

even out of what is necessary to support our position in life, provided that it can be done without impoverishing ourselves, or being compelled to give up our reasonable and justly acquired style of living. We are not obliged to pay large sums of money to ransom a captive from the hands of bandits, or to send a sick pauper to the Riviera for the winter; we should not be obliged to take such extraordinary means even to preserve our own life.

5. We are also under a grave obligation, according to the common teaching of divines, of helping the poor who are in grave necessity out of our superfluity. It is difficult to reconcile the words of Holy Scripture with any more lenient doctrine on this point.[1] However, we should be slow to decide that in any particular case a rich man has sinned mortally by refusing to help one in grave necessity. For although there be a grave obligation occasionally to help the poor in serious want, it cannot be concluded that a grave obligation binds any one particular person to assist all such; that would be an impossible burden. Furthermore, in practice it is frequently difficult to decide when a man is in grave necessity, and whether he will not be more conveniently helped by some one else. Besides, there are not wanting theologians who teach a more lenient doctrine as to the gravity of the obligation of assisting those who are in grave need.

A rich man cannot be excused from sin who makes it a practice never to give anything in alms on the plea that the poor can go to the workhouse, and that he pays his poor rates. For cases of grave and sometimes of extreme necessity arise where it is practically impossible to seek relief in the workhouse; and wherever there is a case of

[1] Matt. xxv. 41; 1 John iii. 17.

true necessity there is an obligation to help as far as one can.

6. The rich are also under an obligation of sometimes helping those who are in common necessity, for the texts of Holy Scripture seem to refer to cases of ordinary need such as are commonly met with, and if no one ever helped the poor their lot would soon become desperate. A man therefore who makes it a rule never to give alms to ordinary beggars certainly commits sin; he is not obliged to help all who apply, but out of his superfluity he must help some. It is a disputed point among theologians whether this obligation binds under pain of mortal or venial sin only. The severer view is the more common, but the milder is defended by many approved authors, on the ground that the necessity of the common beggar is tolerable, and is not so irksome as to impose on others a grave obligation of helping him.

CHAPTER V

ON FRATERNAL CORRECTION

1. By FRATERNAL correction is meant a brotherly admonition given out of charity to a sinner to induce him to amend his ways. If such brotherly admonition is likely to do good and have its effect in procuring the amendment of the delinquent, charity requires that it should be given; for if charity obliges us to assist our neighbor when he is in temporal need, much more does it oblige us to do what we can for one who is in spiritual necessity. Our Lord, too, insisted on the fulfilment of this duty: "But if thy brother shall offend against thee, go, and rebuke him between thee and him alone. If he shall hear thee thou shalt gain thy brother." [1] This obligation is of itself grave, as it belongs to the grave precept of charity, and like charity it binds all men. However, as we shall see, there are several conditions to be fulfilled in order that this precept may oblige in the concrete, and in practice private persons are rarely compelled under grave sin to exercise fraternal correction. Bishops, parish priests, and others who have the cure of souls, as well as parents, are more frequently obliged under pain of mortal sin to admonish those committed to their charge.

2. Theologians enumerate the following conditions as requisite in order that there may arise an obligation of giving fraternal correction:

[1] Matt. xviii. 15.

a. It must be certain that a grave sin has been committed and that the delinquent has not and will not of himself correct his fault. There is no general obligation to correct the venial sins of another according to a very probable opinion; in religious communities, or in other circumstances where uncorrected venial sin might lead to serious relaxation of discipline or other harm, superiors are sometimes bound under grave sin to correct venial faults, or even faults against the rule which are not necessarily sinful. The grave sin must be certain without the necessity of making inquiries, which would be unwarrantable in a private person.

b. If there is some one else who can and will give the necessary admonition, the obligation will not rest upon me.

c. There must be a reasonable expectation that the admonition will do good; there is no obligation to do what is useless. Neither should it be given if it is doubtful whether it will do good or harm.

d. As charity does not bind with relatively serious inconvenience to one's self, there will be no obligation to correct another if this cannot be done without serious inconvenience. This rule applies to such as are bound only out of charity to correct others fraternally; Bishops and priests are bound to do so also in justice, which obliges more strictly than does charity.

3. Our Lord not only inculcated the duty of fraternal correction [1] but he taught that in the first instance it was to be done in private, then in the presence of witnesses, and finally the delinquent was to be denounced to the public authorities in order that public morality might be safeguarded and the sinner more effectually corrected. This

[1] Matt. xviii. 15.

order should, of course, be followed *per se*, for charity and justice demand that our neighbor's secret fault should not be made known to others except in special cases and for good cause. However, cases are not infrequent in which it is lawful to denounce a delinquent immediately to the superior without first attempting to correct him fraternally. Such cases are the following:

a. If the sin be public the sinner's reputation is not injured unjustly by at once informing the superior, which accordingly may be done.

b. If the paternal admonition of the superior will in all likelihood be more sure and efficacious than the fraternal correction of a private person, the superior may be immediately informed as a father, whose duty it is to correct his children for their good, not as a judge, whose duty it is to safeguard public interests by punishing crimes.

c. If harm threatens the community from the action of the delinquent, and it can only be effectually prevented by the intervention of the superior's authority.

d. If the delinquent be one of a religious community whose members have voluntarily renounced their rights in this matter, and agreed that any one who becomes aware of their faults may straightway inform the superior, such a one suffers no injury if the rule be acted on. However, even in this case there must be good reason for making the fault known to the superior, such as the sinner's correction, the good name of the community, the preservation of discipline. If the sin was committed in the past, and there is now no good reason for making it known to the superior, it would be sinful to make it known to him. Religious have a right to their reputation.

Sometimes members of communities, and boys or girls

at school, who know that serious harm to morals is being done by a black sheep among the flock, are bound under penalty of grave sin to give information to superiors so that the suitable remedy may be applied. Such cases require careful treatment from the confessor, who is bound to instruct his penitents concerning their obligations, and to refuse them absolution if they are not prepared to fulfil those obligations which bind them under penalty of grave sin. On the other hand the seal of confession must be safeguarded at any cost.

4. It is the better opinion that private persons are not regularly obliged to admonish another for committing a material sin through ignorance or inadvertence. Sometimes, however, harm would follow even if material sin were to go uncorrected and, inasmuch as charity requires that we should prevent harm when we can, in these cases admonition should be given. Those also who are placed in authority and have the duty of instructing their subjects, preventing scandal, and maintaining discipline, are bound to correct even the material sins of those under their charge.

CHAPTER VI

ON SCANDAL

1. SCANDAL in its theological sense is any word or action which has at least the appearance of evil and which is the occasion of sin to another. This is the received definition of active scandal. Passive scandal is the sin which another is led to commit through active scandal. It is quite immaterial whether passive scandal be a sin of the same species as the scandal which caused it or not; a priest who gets drunk may cause scandal by inducing others to follow his example, or by causing others to speak ill of priests, or of the Catholic Church.

Scandal is direct when it is foreseen and intended. If it is intended precisely in order that another may fall into sin it is called diabolic; if it is intended on account of the advantage it will bring to him who gives it, it is simply direct scandal. Indirect scandal is foreseen by him who gives it, but it is not intended.

Scandal of the weak is caused by the ignorance or frailty of him who suffers it; pharisaic scandal is caused by his malice, as was the case with the Pharisees taking scandal at the words and actions of Our Lord and His Apostles.

2. Giving scandal is of itself gravely sinful, as it is against charity; and it is a special sin against the precept

of fraternal correction which obliges us to do what we can to rescue a fallen brother, whereas one who scandalizes his brother causes him to fall.[1] Although of itself scandal is a grave sin, it is frequently only venial in the concrete. The gravity of the sin is not measured by the malice of the sin which causes scandal, but by the malice of the sin which he who gives scandal foresees will certainly or at least probably be caused in another. Thus a gravely sinful word or act may be a venial sin of scandal, and a venially sinful word or act may be a grave sin of scandal. It is plain, too, that not every sin committed in the sight of others is a sin of scandal, but then only when it is foreseen that at least probably it will cause others to commit sin.

3. There is a twofold malice in sins of direct scandal; such sins are against charity and also against that special virtue which he who suffers scandal violates. So that when A incites B to drink to excess, A sins against charity and against temperance, which not only prescribes moderation in one's own actions but forbids one to be the cause of its violation by another.

The question whether indirect scandal in the same manner also contains a twofold malice is disputed among theologians. The negative opinion is probable, for although the virtue of temperance, for example, forbids me to induce another to sin against it, and I violate temperance if I do so, yet temperance does not require of me that I should prevent others from sinning against it; I may sin against charity if I do not try to prevent a sin of intemperance in another, but I do not sin against temperance. And so when indirect scandal is given, thereby causing another to drink to excess, there is a sin against charity; but the sin

[1] Cf. Matt. xviii. 7.

of scandal does not contain in addition the malice of a sin against temperance.

When A solicits B to commit sin with him and B consents, both sin against charity and also against the virtue which is specially violated; so that although solicitation causes A's sin to be greater, it does not constitute a specific difference, and need not be confessed.

4. If I foresee that scandal is likely to be caused by an action of mine which has the appearance of being wrong, but which in fact is perfectly lawful, I am under the obligation of removing the danger of scandal by explaining my conduct, or omitting the action altogether if I can do so conveniently. If I cannot explain nor omit the action without serious inconvenience, I am justified in performing the action and permitting the scandal, for charity does not bind to one's own serious inconvenience.

5. On the other hand I am not justified in omitting an action which is prescribed by the natural or divine law on account of the scandal which the action would give, and so when God's honor or the salvation of my neighbor or my own require that I should make public profession of the faith, I am bound to make it though my profession will make the enemies of the faith blaspheme.

Even a positive precept does not cease to bind on account of a general fear of scandal; whether it ceases to bind or not on account of scandal in a particular instance is a disputed point. Some theologians maintain that if a woman knows that her presence at Mass is a cause of grave sin to another and she cannot hear Mass elsewhere, she is obliged to abstain from hearing Mass at least for a Sunday or two, because the natural precept of avoiding scandal is more important than the positive precept of hearing Mass on

Sundays. Others on the contrary hold that inasmuch as the scandal is taken and not given, the obligation of hearing Mass does not cease to bind in such a case. Practically, therefore, one is free to follow either opinion. This disputed question refers to scandal of the weak, for positive precepts do not cease to be obligatory on account of pharisaic scandal.

A good action without any appearance of evil which is not prescribed, and which can without inconvenience be omitted, should be omitted when it would cause scandal. If it cannot be abandoned without some inconvenience, there is no obligation to abstain from it; and so I may receive the sacraments even when they are not obligatory from a priest whom I know to be in a state of sin and unworthy to administer them.

6. If I suspect the honesty of a servant I do nothing wrong if I leave a sum of money where I know he will see it with the object of finding out whether he will steal it. If he is an honest man no harm will follow; if he is a thief, my action does not make him one; I do but furnish the opportunity for him to betray himself, and in my own defence I am justified in doing that. It is of course morally wrong to use *agents provocateurs* in order to detect criminals; they are the cause of another's sin, not merely the occasion.

7. If I know that some one has made up his mind to commit sin and there is no other way of preventing him, I may lawfully induce him to be satisfied with some less offence of God than he was bent on committing. And so if a man was determined to commit adultery I do nothing morally wrong, but rather the contrary, by persuading him to commit fornication instead. Many theologians indeed deny this doctrine on the ground that we must

not do evil that good may come of it. But there is no question here of doing evil one's self; we are not justified in doing a less moral evil instead of a greater; we must abstain from all evil, great and small. The question is whether it is an evil action to persuade some one bent on committing a great sin to be satisfied with a less. This is denied by those who defend the above doctrine. And reasonably so, for it is a good action to persuade another to do less evil than he was bent upon doing. To lessen evil is surely to do good. This is the more probable view, according to St. Alphonsus.[1]

[1] Theol. Mor. 2, n. 57.

CHAPTER VII

ON COOPERATION IN ANOTHER'S SIN

1. Closely connected with scandal is the subject of cooperation or participation in the sin of another; indeed they are often treated of together, but on account of the importance of the latter it seems desirable to devote a special chapter to it.

Cooperation, then, may be formal or material. Formal cooperation is concurrence in the bad action of another and in the bad intention with which it is performed. Material cooperation is the concurrence in the external action of another but not in the evil intention with which it is done.

Cooperation is proximate or remote according as the action of the secondary agent is more closely connected with the action of the principal agent or less so.

One is said to cooperate positively when he does something which influences the action of the principal agent; one is said to cooperate negatively when he does not hinder a bad action which he is bound to prevent.

2. It is never lawful to cooperate formally with another's sin, for it is obviously to wish evil, which is always sinful. Nor is it lawful to cooperate materially with the sin of another when the action of the secondary agent is itself wrong, as is also clear. But provided the action of the secondary agent is not itself wrong, but right, or at least

indifferent, and he has no evil intention, and furthermore there is a just cause for permitting the sin of the principal agent, material cooperation in the sin of another is not wrong. In such circumstances, the secondary agent does nothing that is wrong in itself; he foresees, it is true, that another will take advantage of his action in order to commit sin, but the secondary agent is only bound to prevent this out of charity, which does not bind with relatively serious inconvenience, and this is present whenever there is a just cause for permitting the sin of the principal agent. This is merely the application of the principle of a double effect which was laid down in the Book on Human Acts.[1]

The cases to which this doctrine may be applied are very numerous, but the safe application is difficult and attended with risk. The chief difficulty lies in determining the gravity of the cause which will justify one in cooperating materially in another's sin. No general rule can be laid down on the point beyond saying that a graver cause is required when there is question of a graver sin, when the cooperation is more proximate, and when it is more probable that the sin would not be committed at all if the cooperation were denied. The following examples taken from approved authors are given as illustrating the application of the doctrine, and they may be used to show what may be done in similar cases.

a. I may lawfully ask for the sacraments from a bad priest, though he commits sin in administering them, for he need not sin thereby unless he likes, and his malice should not deprive me of the benefit of the sacraments to which I have a right.

[1] St. Alphonsus, lib. 2, tract. 3, n. 63.

b. A dealer may sell to all buyers things which are in themselves indifferent, though they can be put to a bad use, as firearms, unless he is certain that they are required for a bad purpose. Even in the latter case a correspondingly serious inconvenience or loss will excuse his selling, especially if his refusal will not hinder the sin on account of the buyer being easily able to procure what he wants elsewhere.

c. Intoxicating drink may not be sold to one who has already had too much. Many authors, however, allow this to be done when it cannot be refused without provoking to violence and quarreling. This excuse would rarely avail in England at present, because the law forbids such sale, the strong arm of the law thus being on the side of morality.

d. It is not lawful to sell things of which the use is ordinarily sinful, except when their lawful use is guaranteed. And so booksellers are not allowed to sell infidel or immoral books except to such as require them for good reasons and with the requisite permission. The same doctrine applies to drugs and instruments used for immoral purposes, as well as to poisons. Publishers, too, sin by publishing books which are dangerous to faith or morals. Compositors and others employed in printing should not work for firms which are known to publish bad books; as they are usually ignorant of the nature of the work which they help to bring out, their ignorance, the remoteness of their cooperation, and the ease with which other workmen can be found to supply their place, will ordinarily excuse them from sin if an odd bad book or two are published by an otherwise respectable firm.

e. Dancing may be a perfectly innocent amusement

and it may be a dangerous occasion of sin. No general rule therefore can be given as to when dancing must be avoided. Much depends upon the company who join in the dance, upon the way of dancing, and upon the subjective disposition of the dancers. If there be nothing objectionable in any of these respects, there is no reason why a young man or a young woman should not be allowed to dance with due caution. If there be ground for objection, and especially if sin has already been frequently committed in similar circumstances, there is an obligation to abstain, unless the occasion of sin is necessary and can be made remote by taking proper precautions. If sin only follows occasionally, there will be no strict obligation to abstain from dancing, provided due precautions be taken in future.

f. The question of theater-going is settled on similar grounds. There are all sorts of theaters and all sorts of plays represented in them, and all sorts of actors and actresses. To go and listen to a bad and suggestive play arouses the passions, leads to sin, and encourages evil in many ways. It will, then, as a rule, be grievously sinful to go to the theater to see such a play. The confessor will usually be able to judge best whether in any particular case it is lawful to go to the theater by asking whether in the past it has frequently led to sin. If it has done so, it is a proximate occasion of sin, and must be avoided as far as possible. In other cases, unless the play or the theater is known to be bad, there will be no strict obligation to refrain from going.

BOOK VI

PRECEPTS OF THE DECALOGUE

PART I

THE FIRST COMMANDMENT

CHAPTER I

THE MATTER OF THE COMMANDMENT

THE great precepts of the natural law which binds all men are summed up in the Ten Commandments given by God to the Israelites, and which Our Lord declared that He came not to destroy but to fulfil. They bind all men, and they will continue to do so as long as human nature is what it is; if only they were observed, the blissful state of happiness of which poets have dreamed, and reformers have striven in vain to bring about, would indeed be realized on earth. The first three Commandments lay down our duty toward God and constitute the first table; the rest, forming the second table, contain our duties toward our neighbor and our self-regarding duties.

The First Commandment in the words of Exodus is: "I am the Lord thy God . . . thou shalt not have strange gods before Me." [1]

Here God solemnly declares to us that He is our Lord God from whom we have all that we possess, on whom

[1] Ex. xx. 2, 3.

we depend absolutely, to whom we altogether belong. From this, our essential relation with God our Creator, is derived immediately our duty to worship Him as our first beginning and last end. The fact that we derive our bodily origin under God from our parents lays upon us certain obligations in their regard; similarly, our relation to God imposes on us our highest duty of worshiping God, our Creator.

The acts of this worship, which natural reason thus prescribes, belong to the virtue which theologians call religion. They are acts such as prayer, worship in the stricter sense, sacrifice, offerings, tithes, vows, oaths, etc. Most of them will be more suitably treated of elsewhere; in this part we will consider the subject of prayer and worship, and then the chief sins against the virtue of religion.

CHAPTER II

ON PRAYER

1. Prayer sometimes means any pious affection by which the mind and heart are raised to God. More strictly, it is the petitioning of God for what we stand in need of, and this is called the prayer of petition to distinguish it from the more general signification of t' term.

Mental prayer is made with the internal faculties of the soul, while vocal prayer is made with the lips also.

Public prayer is offered by authorized ministers in forms approved by the Church; all other is private prayer. Public worship is subject to the authority of the Church, which has regulated it by a large body of laws and decrees. Unauthorized forms of prayer may not be used in public worship, and it has been prescribed that only the litanies which are found in the breviary and in the more recent editions of the ritual, or such as have been specially approved by the Holy See, may be used in public. Moreover, no litanies may be published even for private use without the approbation of the Ordinary.

2. For adults, prayer is a necessary means of obtaining salvation; for there are certain graces necessary for salvation, such as final perseverance, which God only grants in answer to prayer, as St. Augustine teaches.[1] Prayer

[1] De bono persev. c. 16.

is also of precept: "We ought always to pray and not to faint."[1] This precept is grave of itself, and for its fulfilment requires that we should pray frequently. Beyond saying this, it is difficult to determine precisely what neglect of prayer is required for a mortal or a venial sin. It would seem certain, however, that grave sin would be committed by altogether neglecting prayer for a whole year. The faithful rightly accuse themselves in confession when they have omitted morning or night prayers, for those times are the most suitable for fulfilling this duty, and if no prayers are said then, they will hardly be said at other times; moreover, the omission will usually be due to sloth or carelessness about spiritual things.

3. Our Lord promised that prayer when rightly made would be heard by God: "I say to you, Ask and it shall be given you: seek and you shall find: knock and it shall be opened to you."[2] We learn from His teaching and from the nature of prayer what qualities it must have in order to be acceptable to God and heard by Him. The object prayed for must be necessary or at any rate useful for salvation. Not only spiritual blessings are proper objects of prayer but temporal blessings as well, as far as they conduce to the welfare of the soul. Prayer must be persevering; God has promised to hear prayer, but He has not promised to hear it at once. The time must be left to His wisdom and providence with due conformity to His holy will. Prayer must come from an humble heart, in which faith, hope, and charity dwell, in order to merit the promises of God. Moreover, God will not do violence to man's free-will, and so if prayer is offered for some one else, its effect to some extent depends on that person's

[1] Luke xviii. 1. [2] Luke xi. 9.

dispositions and free-will. He may, if he pleases, put obstacles in the way, which will prevent the prayer from obtaining the precise effect wished for in his regard. Theologians conclude that prayer must be made for one's self in order to be infallibly heard by God.

4. We are obliged by precept only to pray to God, unless we admit with the common opinion that any one who should never pray to the Blessed Virgin Mary would sin venially by neglecting so powerful a means of salvation. We may, however, lawfully and with fruit pray to the angels and saints, more probably to the holy souls detained in purgatory, and in private to any one whom with reasonable certainty we believe to be with God in heaven, that they may intercede with Him for us.

5. We should pray for all men whom it will benefit without excluding any one in our private prayers. It is useless praying for the damned, and the Church forbids her ministers to pray publicly for those who are excommunicated.

CHAPTER III

ON WORSHIP

1. Worship here signifies any external action by which we show deference and respect to another. Such an act is grounded on the persuasion that the person honored is worthy of our esteem, and that it is proper to mark our esteem by such an external act of deference.

If the qualities which command our respect belong to the sphere of civil life, our worship is civil; if they belong to the sphere of religion, it is religious worship. Religious worship which is paid exclusively to God on account of His infinite and uncreated excellence is called by divines *latria*. That paid to the saints is called *dulia*, while the special worship with which we honor the Blessed Virgin Mary, the Mother of God, on account of her created but preëminent excellence is called *hyperdulia*.

Worship is absolute when the excellence which grounds our esteem is in the object honored; it is relative when paid to some object on account of its connection with a person worthy of our esteem and honor.

2. In this chapter we will briefly consider the regulations of the Church with regard to the worship of the saints, their relics, and images, and the principles which underlie that worship. We suppose the truth of the Catholic doctrine on this subject — that the worship

which the Church authorizes to be paid to the saints, to their relics and images — is lawful, praiseworthy, and meritorious. In the first place, then, we are allowed privately to show that inferior worship, which is called *dulia*, to any one whom we know with moral certainty to have died in the grace and friendship of God. We may also show marks of relative worship to anything connected with him during life. It is evident that there is nothing reprehensible in such worship; the world is accustomed to show similar marks of its esteem to its great statesmen, generals, poets, and inventors. The Church does not interfere with private worship provided there is nothing in it that is objectionable.

3. Public worship, however, is subject to the authority of the Church, and she regulates it both as to its manner and objects. No signs of public worship may be used besides those which are sanctioned, nor may the accustomed and approved signs of honor be shown to any except those who have been canonized or at least beatified by the Holy See. Only the saints, not the beatified, are invoked in the public litanies, and ordinarily it is not lawful to erect churches or altars in honor of the beatified; this mark of honor is reserved for the canonized saints. The pictures of the saints are painted with aureoles, those of the beatified with rays. It is not forbidden to place statues of men who have not been canonized or beatified in our churches provided there be no marks of religious worship shown them; and paintings of such men may, under the same condition, be placed on the walls or windows of a church. Such paintings, however, may not be placed over an altar.

4. The Church is very careful to guard against abuse and fraud in the worship of the saints, their images, and

relics, as is shown especially by the wise decree of the Council of Trent on the invocation of the saints, and the veneration paid to their relics and images. (sess. 25.) In that decree it is specially prescribed that no new relics or miracles are to be admitted except with the Bishop's approbation after making a diligent inquiry into the truth of the matter. The question of the authenticity of relics is one of fact and proved by the ordinary rules of evidence. When there seems to be moral certainty of the genuineness of a relic, the Church permits relative honor to be paid to it on account of the spiritual excellence of the person with whom it was connected. The honor is thus referred to the person of the saint and to God who is glorified in all His saints. It is quite possible for mistakes to be made about the genuineness of a relic; the infallibility of the Church does not enter here. When a mistake is detected, of course the honor previously paid to a false relic should stop. No one need be scandalized or distressed when any such discovery is made. The merit of the worship previously paid in good faith is not lost; the saint whose relic it was supposed to be was really honored by marks of devotion shown to it out of love for him. It is as if a devotee of Shakespeare were to keep a bust in his room, and show it marks of honor because he supposed it to represent the great poet; if he found out that it was a bust of Thomas Cromwell, he would be disappointed, but neither he nor Shakespeare would have suffered any great loss.

CHAPTER IV

ON SUPERSTITION

Sins may be committed against the virtue of religion by excess or by defect in the same way as against other moral virtues. Sins against religion by excess come under the general term of superstition, of which there are several species. For the sin of superstition may be committed by worshiping the true God in the wrong way, or by worshiping false gods. We will first briefly treat of the wrong ways of worshiping the true God, and afterwards of worship paid to false gods.

Section I

Wrong Ways of Worshiping God

1. God may be wrongly worshiped either by false worship or by superfluous worship being paid Him. Worship of God is false when its meaning is not in accordance with fact, or when the falsehood is in the person who performs the act of worship, as when a layman performs the duties of a priest, or when some one tries to gain credence for false miracles or false relics. The ceremonies and practices of the Jewish religion signified that the Messiah was to come, and so now, after the coming of Our Lord, they could not be employed without superstition. Inas-

much as falsehood in religion is a grave injury to God, this species of superstition is mortally sinful.

2. Anything in the worship of God which does not tend to His honor and glory, or which is against the ordinances and practice of the Church, to whom the regulation of religious worship exclusively belongs, is superfluous worship and superstition. This sin is committed by attributing an infallible effect to a fixed number of prayers or acts of piety, or to the mere material wearing of scapulars or medals, or by unwarrantably acting against the rubrics while saying Mass or administering the sacraments or sacramentals of the Church. The intention of the Church is that scapulars, medals, and other pious objects should be used by the faithful with confidence in the goodness and power of God, whose aid is invoked on the wearers by the blessing of the Church. Ordinarily, however, this kind of superstition will not be more than a venial sin.

Section II

On Idolatry

The sin of superstition is also committed by giving divine honor to false gods. This is done by idolatry, divination, vain observance, and magic.

By material idolatry divine worship is given to a creature through fear or for some other reason merely externally, without any intention of honoring it as God. It is a grave sin, for it is directly against the obligation of making external profession of the faith, and contains the grave malice of a lie in matters of religion.

Formal idolatry is perfect or imperfect. The former consists in honoring a creature as God, falsely thinking

it to be God. The latter knowingly honors a creature as God, without any excuse of ignorance, out of hatred towards Him, or wishing to obtain something thereby. Both are grievous mortal sins, but the latter is the more grievous on account of the greater knowledge and malice.

Section III

On Divination

1. We here suppose that the devil, a wicked spirit of great intelligence and power, but subject to God, exists and continually interferes in the affairs of men in order to ruin them. This truth belongs to the Catholic faith and cannot be denied without sin. The sin of divination is committed when the devil is invoked expressly or tacitly in order to discover what is secret and hidden. There is express invocation of the devil when his aid is expressly implored. The devil is tacitly invoked when altogether inadequate means are used to find out what is occult, means which are not sufficient for the purpose naturally, and which have not been ordained by God for that purpose. The devil is eager to be appealed to in order the more easily to attain his own ends, and any one who uses such inadequate means to find out hidden secrets virtually appeals to the devil to help him. A great variety of such means of divination has been in use from the earliest times among all nations; and periods which have witnessed a decay of faith have also witnessed a recrudescence of these superstitions. The following are some of the better known methods of divination practised from the earliest times. The devil sometimes takes possession of the body of a human being and manifests what is secret through

it; this was called pythonism. The devil had his prophets as God had. In necromancy the devil answers through the dead called to life again. At certain places he gave oracles through idols. Sometimes he communicated with men through dreams. In all the foregoing methods we have the express invocation of the devil. He is tacitly invoked when the lines of the hand are consulted as indications of the future, as is done in chiromancy; or the course of the stars, as in astrology; or the flight or song of birds, as in augury; or some chance event is taken as foretelling what is going to happen, as in omens.

2. Divination is mortally sinful, for it is a great insult to God to hold intercourse with and seek aid from the devil, His bitter enemy; and besides it is most dangerous to the parties concerned. He is wont gradually to insinuate himself until he has his victim within his power, and then he works on him his evil will. Such practices as those of divination are specially declared to be hateful to God in Holy Scripture: "Neither let there be found among you any one that shall expiate his son or daughter, making them to pass through the fire; or that consulteth soothsayers, or observeth dreams and omens, neither let there be any wizard, nor charmer, nor any one that consulteth pythonic spirits, or fortune-tellers, or that seeketh the truth from the dead. For the Lord abhorreth all these things, and for these abominations He will destroy them at thy coming." [1] Although tacit as well as express divination is grievously sinful of itself, yet it is frequently only venial on account of the ignorance and simplicity of those who indulge in it, or because they do not entirely believe that the future can be known by such methods,

[1] Deut. xviii. 10-12.

and they use them in joke or out of curiosity. In this way young people who consult gipsies or palmists are ordinarily excused from grave sin.

3. We know from Holy Scripture that Almighty God has sometimes made known His will to men by means of dreams, and the devil, too, is able to fill the mind with his suggestions during sleep. If God in some rare instance uses dreams to make known His will, He should of course be lovingly obeyed. The suggestions of the devil, on the contrary, should be repelled and despised. We can distinguish between the two sources by observing whether the impulse received is towards good or evil, whether what is suggested is worthy of God, whether it tends to disturb our peace or leaves us tranquil and disposed to the service of God. Dreams have ordinarily a natural cause, but they are no indication of what the future will bring. We may not, then, guide our conduct by dreams; God has given us our reason and the Church to teach us what we should do; we must follow these and not dreams if we would act aright. Constantly to guide ourselves by dreams would be mortally sinful, to allow them to influence us occasionally and in matters of little moment would not be more than a venial sin.

4. There is no harm in casting lots to decide a doubtful claim; the parties merely agree to stand by what turns up by chance. It is superstitious and sinful to cast lots in order to discover some secret, or with a view to shaping one's life according to the issue. Sometimes this method of deciding doubts has been adopted by holy men in consequence of an intimation received from God, or sometimes because no better way out of the difficulty appeared.

The use of the divining rod under the belief that a stick

of a special shape cut from a particular kind of tree or bush will point out hidden treasure, or mines, or springs of water, is superstitious and sinful. For it is certain that there is no natural force which acts in the arbitrary manner in which the divining rod is said to act under the circumstances. It is not impossible but that particular individuals may be very sensitive to the presence of water or minerals even when hidden under the surface of the earth, and perhaps the frequent finding of springs by dowsers is partially to be explained in this way. Then by practice and experience a power of detecting the presence of underground water from the vegetation or other signs on the surface may be developed. There is also without doubt a great deal of fraud in such matters. Finally the devil may sometimes intervene.

5. Modern spiritism is obviously the pythonism, necromancy, and other forms of divination which have been mentioned above. It is gravely sinful, therefore, to act as a medium or to consult one with a view to finding out something which is not known. Crystal-gazing, table-turning, the use of the planchette for occult purposes, is also divination and grievously sinful. It is not impossible that the movements of the table in table-turning and of the planchette are due to the unconscious action of the sitters. On this hypothesis it would not be unlawful to make experiments with a view to finding out the truth; divination comes in when by such means the sitters seek to discover what it is certain none of them knows, consciously or unconsciously.

It is well to bear in mind a remark which St. Thomas of Aquin makes after St. Augustine, that the devil wishes to excite among men a greater curiosity about occult

matters "so that being implicated in these observances, they may become more curious and get themselves more entangled in the manifold snares of pernicious error." [1]

Section IV

On Vain Observance

1. The term *vain observance* is used by theologians to designate various kinds of superstition by which altogether disproportionate means are employed to procure a sure and certain effect. It comprises the use of charms, spells, and cabalistic signs, which are used to preserve persons and things from harm, or cure wounds and diseases, or acquire knowledge without the labor of study. It also signifies the superstitious observance of chance events and days, some of which are considered lucky, others unlucky. Magic is the art of wonderworking by the help of the devil.

2. Vain observance, or witchcraft and magic, is gravely sinful for precisely similar reasons as divination is. There is only an accidental difference between these kinds of superstition, for while divination uses disproportionate means to discover what is hidden by the help of the devil, witchcraft uses disproportionate means to obtain certain and wonderful effects by his help. Morally, therefore, there is no difference between divination and witchcraft. Like divination, witchcraft may contain an express or tacit compact with the devil, and although if the compact be express there will always be mortal sin, there will frequently be only venial when the compact is tacit. Ignorance or good faith or want of full confidence in the

[1] Summa Theol. 2–2, q. 96, a. 3, ad 2.

effect will in that case frequently excuse from serious sin. Moreover, there must be advertence to the total inadequacy of the means to obtain the effect desired, and to the danger of the devil's intervention, otherwise there will not be the sin of superstition. And so people who do not like to undertake any journey on a Friday, or to sit down with thirteen at table, because they have always heard that it is unlucky, and because their fathers had similar scruples, may often be excused from sin.

3. In a case of doubt whether a particular effect is to be ascribed to natural causes or not, we should rather ascribe it to natural causes than to the devil, for we must not bring in the preternatural without necessity, and we do not yet know all the forces of nature. Thus many believe that telepathy really exists and is due to natural causes. In such a case of doubt, then, we may experiment and investigate the matter; it is advisable to renounce all intention of dealing with the devil as a precautionary measure. If, on the contrary, it is certain that the effect is not attributable to natural causes, it should be ascribed to the devil rather than to God in case of doubt; for God does not work miracles without good reason, and ordinarily the sanctity of the person concerned and other circumstances clearly show divine intervention when it takes place.

4. Many theologians hold that the phenomena of hypnotism are due to preternatural causes, and consequently they maintain that it is unlawful to induce the hypnotic state or to have any part in it. Others more probably think that the state itself and the susceptibility of the hypnotized subject to suggestion on the part of the hypnotizer, together with those phenomena which affect

the bodily organs and the imagination, are due to natural causes. The rarer phenomena of clairvoyance by which scenes and passing events at a great distance are seen, or by which an ignorant medium shows knowledge which is not possessed in the normal state, must be attributed to preternatural causes. For it seems impossible that natural forces should be able to produce effects altogether beyond their range. Even if we admit that the hypnotic state and the bodily phenomena are due to natural causes, it does not follow that any one may induce the hypnotic sleep merely for the sake of experiment or out of curiosity. Such a practice would be accompanied with grave dangers, moral and physical, and it is not lawful to permit one's self to be deprived of the use of reason, and to subject one's self to another's control, without good cause and proper safeguards. Medical men, however, and other persons of skill and experience cannot be precluded from using a means which is very probably innocent, with proper precautions and for a good reason.

CHAPTER V

ON TEMPTING GOD

1. In this and the two following chapters we will treat of sins against religion by defect. The first of these is tempting God, which a person commits by saying or doing something by way of experiment to discover whether God is wise, powerful, good, or endowed with some other perfection. There is a formal sin of tempting God when there is a positive intention to make an experiment with God; the sin is virtual when that intention is absent, but something is said or done which can have no other meaning than to find out whether God has some perfection or not. Even in this case there must be some reference to God, some desire or wish to implore His help; otherwise there cannot be any tempting of God.

2. Formal tempting of God is a mortal sin, as is obvious; for it is a grave insult to the divine Majesty, who has graciously given men all the knowledge about Himself that they require, and it contains the malice of unbelief as well.

3. God is virtually tempted when, contrary to the designs of His Providence, we neglect natural means, trusting that He will give us special help. This too is of itself a grave sin, but it often becomes venial on account of want of knowledge, consideration, or advertence.

Thus people are guilty of grave sin who refuse to send for the doctor and will not use the ordinary remedies when they or their children are seriously ill, trusting that God will work a miracle. A preacher who neglected to prepare properly for his sermon, or one who exposed himself to some slight danger through improper trust in the divine help, would only sin venially. After doing what we can, or if we can do nothing, then we may at once with full confidence have recourse to God in our necessities. The trials by ordeal, which were in vogue in the Middle Ages, were in the ninth century condemned by the Church as superstitions.

CHAPTER VI

ON SACRILEGE

1. Sacrilege is defined to be the irreverent treatment of sacred persons, places, and things. The irreverence consists in doing something which is specially repugnant to the sanctity of the object in respect of its sacred character. A person, place, or thing becomes sacred by being dedicated to the service of God by public authority, for it does not seem possible that the dedication of an object to God by private authority should be able to lay an obligation on others to treat it with the reverence due to sacred things. Such an effect requires public authority.

Objects become sacred in consequence of being dedicated to God's service by an authorized person according to the form prescribed by the Church. Not every form of blessing, however, makes the blessed object sacred. We must distinguish between blessings which invoke the divine favor on the use of certain things, but which do not make them sacred, and blessings which hallow and consecrate the object so that it can no more be lawfully used for profane purposes. Food, or candles, or holy water, which are blessed in the former way, do not thereby become sacred, and may still be used for ordinary purposes; churches, chalices, and baptismal water, are consecrated by special blessings and may only be used for the purposes to which they are dedicated.

The sanctity which belongs to a consecrated person is different from that which belongs to holy places, and this again is different from that which belongs to sacred things. So that the sins by which sacred persons, places, and things are violated are specifically different from each other. Theologians dispute whether these three species of sacrilege contain other lower species or whether they are themselves the lowest. Many of them hold that they are the lowest, and this seems to be the opinion of St. Thomas.[1]

2. Sacrilege in all its species is a grave sin of itself, inasmuch as irreverence shown to sacred things redounds to the dishonor of God, to whose service they are dedicated. If, however, the matter be trivial, as, for example, some slight irreverence to the Blessed Sacrament, sacrilege will only be a venial sin.

3. Personal sacrilege is committed in three ways:

a. By violating the privilege of the canon, by which it is forbidden under pain of excommunication to lay violent hands on the clergy or on religious.

b. By violating the privilege of the immunity of the clergy from civil jurisdiction, as far as this is still in force.

c. When persons consecrated to God by the vow of chastity violate their vow. Such persons are all those who are in sacred orders, and all religious who take perpetual vows even though they be simple and not solemn. All sins therefore against purity, whether internal or external, which these persons commit, or which others commit with them, are sacrileges. It is a disputed point among theologians whether a private vow of chastity makes the person sacred, so that sins committed against the vow are sacrilegious. Both opinions are extrinsically probable,

[1] Summa, 2–2, q. 99, a. 3, ad 2.

though the negative view seems more in accordance with what was said above, in keeping with the common teaching of divines. The question is not of great practical importance since sins committed against chastity by those who are under a private vow have certainly a twofold malice, one against chastity, and the other against religion; and sins against religion are called sacrileges in a wide sense.

4. Local sacrilege is also committed in three ways:

a. By violating the immunity of sacred places as far as this is still in force.

b. By committing certain crimes in a church or public oratory, which have been consecrated or at any rate blessed, by which crimes they are polluted according to canon law. Those crimes are homicide, suicide, any shedding of blood by violence which constitutes a mortal sin, a consummated sin against chastity, and the burial within a church or oratory of an unbaptized person, or of one who has been excommunicated by name or is under excommunication for a public breach of the privilege of the canon.

c. By performing certain actions and by committing certain sins which of their nature or by special disposition of law are especially repugnant to the reverence due to holy places. Sacrilege is thus committed by holding a public market in a church, or a banquet, or using it to stable horses or cattle. There is, to be sure, a special indecency and irreverence in committing any sin in church, but the malice contracted from this circumstance will only be mortal in certain special cases.

On this ground it is probable that only external, apparent, and consummated sins against chastity contract the grievous malice of sacrilege from being committed in

a church; internal and secret or not consummated sins against purity which do not pollute the church, probably do not contract the grave malice of sacrilege if they are committed there.

5. Real sacrilege is also committed in three ways:

a. By treating with irreverence sacred things, such as the sacraments, Holy Scripture, relics, sacred images.

It is a sacrilege to administer or to receive the sacraments in a state of mortal sin, to quote the words of Scripture for the purpose of making an obscene joke, to treat sacred images and relics with contempt.

b. By theft of sacred objects. Sacrilegious theft is committed by stealing a sacred object from a sacred place, or a profane object from a sacred place, or a sacred object from a place that is not sacred, according to an old decree of canon law.[1] In the first of these cases a double sacrilege is committed, local and real, as when a chalice is stolen from the tabernacle; in the last case real sacrilege only is committed, as when a chalice is stolen from a priest's room. Local sacrilege only is committed in the second case, and indeed according to a probable opinion, then only when the object stolen belongs to the sacred place, or has been entrusted specially to the sacred place for safe keeping. If a thief picks a pocket in church, his sin probably has not the malice of a grievous sin of sacrilege, although it may be grievous as against justice.

c. By committing the sin of simony, the treatment of which is reserved for the next chapter.

6. Theft of ecclesiastical property or wilful damage done to it is sacrilege, for although the money or other property belonging to the Church is not sacred in itself, still by

[1] c. 21, c. 17, q. 4.

damaging or stealing it an injury is done to those sacred persons, places, and causes, that are supported by Church property. The private property belonging to a cleric is not ecclesiastical property, but only that which belongs to a Church, religious order, or pious institution erected by episcopal authority. Theft, therefore, of the private money of a cleric is not sacrilege.

7. It is not lawful for lay people, unless they be sacristans, to touch the sacred vessels which are used to hold the Blessed Sacrament. Palls, corporals, and purificators, should after use be washed by a cleric preparatory to their being washed in the ordinary manner. A violation, however, of these regulations would not be a grievous sin of itself; indeed, when there was a just cause, it would be no sin at all.

CHAPTER VII

ON SIMONY

1. Simony derives its name from Simon Magus, who, as we read in the Acts of the Apostles,[1] desired to buy with money the power of giving the Holy Spirit. It is defined to be a studious wish to buy or to sell for a temporal advantage something which is spiritual, or which is annexed to what is spiritual. The terms of this definition are technical and require some explanation.

Simony, then, is said to be a studious wish to buy or to sell, in order to emphasize the fact that although no explicit contract is entered into by the parties there may be still simoniacal dealing between them. Thus, if a person makes a money present to a priest with the intention of obliging him to give him absolution for his sins in return, he commits a sin of simony, though there is no express bargaining between them.

In simony a temporal advantage is exchanged for something which is spiritual. The temporal advantage may be money and whatever is exchanged for money, or a service rendered, or favor, patronage, and defence. The spiritual object which is given for the temporal advantage is whatever has relation to the salvation of the soul. It may, then, be grace or the gifts of the Holy Ghost, or the sacraments and sacramentals, or prayer, or the use of

[1] Acts viii. 18.

spiritual power for absolving, dispensing, blessing, excommunicating, and so forth.

Something may be annexed to what is spiritual either antecedently or concomitantly or subsequently. The material of which a chalice is made is said to be annexed to a consecrated chalice antecedently, inasmuch as it existed and had its value before the chalice was consecrated. Something is annexed concomitantly and extrinsically to what is spiritual when it is associated with what is spiritual but only accidentally, as the extra labor associated with singing a late Mass. It is concomitantly and intrinsically annexed to what is spiritual when the connection is necessary, as the labor which must of necessity accompany any spiritual function. A temporal advantage is annexed to what is spiritual consequently, when it follows from and is derived from what is spiritual, as the right to the revenues of the parish is derived from the office of parish priest. There is no simony in buying or selling what is antecedently annexed to something which is spiritual, provided that the price be not increased on account of the connection with what is spiritual, and provided the Church has not forbidden it. It is lawful to sell consecrated chalices or the fabric of a church for what the materials are worth. The Church has forbidden any money to be received for the holy oils, even so much as the cost of the oil. Similarly it is not simony to receive payment for extra labor spent on some religious function. It is simony to receive money for what is concomitantly and intrinsically annexed to that which is spiritual, for they are regarded as identical. It is also simony to buy or sell that which is consequently annexed to what is spiritual, for the accessory follows the principal.

2. Simony is called mental when no express contract is entered into between the parties. It is purely conventional if the contract has been expressly entered into, but has not yet been executed by either party; it is partly conventional when the contract has been executed by one of the parties. Simony is real when the contract has been executed by both parties to it.

Simony which is committed with reference to the presentation and election to benefices, or the resignation or reservation of them, is called confidential simony, in contradistinction to common simony which is committed in other matters.

Furthermore, simony is of divine law when it is against the law of God; it is of ecclesiastical law when it has been constituted by the prohibition of the Church. For, in order to remove all danger of simony against the law of God, the Church forbids certain contractual dealings where spiritual things are exchanged. Thus it is unlawful without due authorization to exchange benefices, which therefore would be simony by ecclesiastical law. Similarly the Church in certain cases forbids the sale of what is antecedently annexed to some spiritual object. It is thus unlawful to take money for the cost of the material in the holy oils, or to sell blessed rosaries, or indulgenced crucifixes and other objects of piety. If this is done, simony is committed, and the objects lose all their indulgences.[1]

3. Simony, like sacrilege, is a grave sin, and if it is against the divine law it is always mortal. For it is a grave injury to divine things and to God to barter even a small spiritual thing for any temporal advantage whatever. If the simony be merely of ecclesiastical law it is also of itself a mortal

[1] S.C. Indulg., July 12, 1847.

sin, but inasmuch as it is constituted by ecclesiastical prohibition and a sin of disobedience is only venial when the matter is trivial, there may consequently be venial sins of that simony which is merely of ecclesiastical law.

4. It is not simony to receive stipends for saying Mass according to the intention of the giver, nor to take stole fees on occasion of certain priestly ministrations. The stipends and the fees are not given as the price of the spiritual ministrations, but the occasion of these ministrations is taken for the fulfilment of the duty which is incumbent on the faithful of supporting religion and its ministers. "The Lord ordained that they who preach the gospel should live by the gospel." [1] The amount of these offerings, as well as the occasions on which they are made, are regulated by ecclesiastical law and custom, and no change should be made in these ordinances by private authority. The priest has a strict title in justice to receive them from all who are competent to pay. On the other hand he has no right to demand more than the authorized amount.

5. The Church has enacted many stringent laws against the crime of simony. Thus, according to the Constitution of Pius IX, which begins with the words *Apostolicæ Sedis*, excommunication reserved to the Pope is inflicted on those who are guilty of real simony in the matter of benefices and on their accomplices. The same punishment is meted out to all who are guilty of confidential simony, and to all who commit real simony in the matter of admitting postulants into religion.

Simoniacal election to ecclesiastical benefices is null and void, and the incumbent thus elected obtains no right to the revenues of the benefice, which accordingly he is bound

[1] 1 Cor. ix. 14.

to restore to the Church, to the poor, or to his lawful successor, if he has already received them.

If commutative justice has been violated in other simoniacal transactions, restitution must, of course, be made; unless justice has been violated there will be no obligation to make restitution or to rescind the contract, though it was sinful to enter into it. Restitution, then, would have to be made by a priest who exacted more than the accustomed stipend for a Mass, for he has a just title to receive that amount and no more; restitution need not be made when a relic has been sold, even though the transaction was sinful.

Part II

THE SECOND COMMANDMENT

The Second Commandment of the Decalogue is, "Thou shalt not take the name of the Lord thy God in vain."[1] It prohibits all irreverent use of the name of God, blasphemy, unlawful oaths, and violation of vows. Inasmuch as it is virtually positive, it commands us always to speak of God with reverence and respect.

[1] Ex. xx. 7.

CHAPTER I

THE IRREVERENT USE OF GOD'S NAME

We take God's name in vain and break the Second Commandment when we use the word "God" as an exclamation of wonder or impatience, or merely as an interjection in such phrases as "good God," "my God," "by God." If these phrases are used at fitting times and with due reverence they are of course not sinful but meritorious; the sin consists in using them without due reverence, too frequently, and merely as expletives, for such an abuse of the holy name of God shows a want of reverence to Him and is displeasing to Him.

This irreverence, however, is not grave, and so the sin of taking God's name in vain is of itself only venial; indeed, want of advertence will often prevent it from being even venially sinful. Still, care should be taken to correct any bad habit that may have been contracted in this matter.

What has been said of the name of God may be applied with due proportion to those of Our Lord, the Blessed Virgin, and the saints.

CHAPTER II

ON BLASPHEMY

1. BLASPHEMY is an imprecatory or a contumelious speech against God. Not only words but actions also which express contempt, insult, derision, or imprecation against God are blasphemies.

Blasphemy is direct when the dishonor of God is intended; if the dishonor of God is not intended in itself but it is foreseen that it will be the consequence of one's words or actions, it is indirect.

Blasphemy which is against God in His own person is immediate; if it immediately affects some creature which has a special relation toward God it is mediate.

2. Blasphemy is a grave insult to Almighty God and is always a serious mortal sin if it is committed with full advertence and consent. To deny the existence of God, to complain against His Providence and assert that He is unjust, to deny the perpetual virginity of the Blessed Mother of God, are so many heretical blasphemies and grievous sins.

It is a disputed question among theologians whether blasphemy against the saints which is only mediately against God is of the same species of sin as blasphemy which is immediately against Him. Many assert that the species is different inasmuch as the honor due to the

saints is outraged as well as that which is due to God. Ordinarily, however, it is God who is chiefly dishonored by insults offered to His saints, and so practically we may follow the opinion of other theologians and hold that there is no specific difference between the two sins.

3. To utter imprecations or to speak injuriously against creatures which have a special relation to God is blasphemy. Thus it is grievously sinful to call down maledictions on one's fellowmen, wishing that they may perish eternally. Such acts are seriously against charity as well as religion. To utter imprecations against brute beasts or other creatures which have no special relation to Almighty God is not blasphemy, and will not ordinarily exceed a venial sin. Profane words and vulgar expressions like "damn," "bloody," and so forth, are commonly used without definite meaning, and at most are venial sins, because they are unbecoming, shock others, or are manifestations of anger and impatience. It is sometimes said that blasphemy is most common where faith is strong, and this may be a reason why real blasphemy is not so common perhaps with us in ordinary conversation as with some nations.

CHAPTER III

ON OATHS

1. An oath is the calling on God to witness to the truth of what we say. This calling on God may be express or tacit: it is express when God is mentioned, as, "I swear by God"; it is tacit when we swear by some creature which in a special way shows forth the Divinity, or has some special relation to Him, as, "I swear by the Christian Faith," "by the Gospel," "by Heaven."

In an assertory oath we call God to witness to the truth of a present or past event; in a promissory oath we call Him to witness to some future event.

A solemn oath is clothed with the ceremonies prescribed by law, such as holding up the right hand, or kissing the Bible; a simple oath is devoid of such ceremonies.

An imprecation is sometimes added to an oath by such words as, "so help me God"; in this case we have an imprecatory oath; otherwise it is an invocatory oath.

2. There cannot be an oath strictly so called unless there be the intention of swearing and a suitable form of words be used which express that intention. One who uses the colloquialism, "I swear it is so," usually has no intention of taking an oath, nor do the words signify an intention of calling on God to witness to the truth of what is said. The same must be said of phrases like "on my honor,"

"by my faith," "God knows"; and *a fortiori* the mention of fabulous gods, as, "by Jupiter," etc. However if there be an intention to take an oath, this will be sufficient to make it binding in conscience whatever the form of words may be, so that perjury will be committed if what is asserted is not true. If the form of words is suitable for an oath, the intention to swear is presumed.

3. If the requisite conditions be fulfilled, oaths are lawful, and indeed they are an act of divine worship, for they are an acknowledgment of the omniscience and veracity of God, as well as a public profession of belief in Him. This has been the constant teaching of the Church, teaching which has ample warrant in both the Old and New Testament. The prophet Jeremias lays down the conditions which justify an oath, and many instances of oaths are found in the epistles of the Apostle of the Gentiles. The words of Our Lord [1] do not prohibit the taking of oaths if the requisite conditions be present. They give expression to His desire that all Christians should be so truthful and sincere that it will not be necessary for them to use oaths to confirm the truth of what they assert. The conditions which make an oath lawful are given in the words of Jeremias: [2] "And thou shalt swear, As the Lord liveth, in truth, and in judgment, and in justice."

We swear in truth when we are morally certain that what we assert under oath is according to fact. We are not justified in asserting that to be true which we do not know to be true, and we commit the grave sin of perjury if we swear to what we know to be false.

We swear with judgment when there is a just cause for invoking the testimony of God, and it is done with proper

[1] Matt. v. 34. [2] Jer. iv. 2.

consideration and reverence. A just cause will be any matter of some importance for the welfare of either soul or body, whether it be public or private. We are not, therefore, justified in swearing to every assertion which we believe to be true; there must be some special reason for employing the name and authority of God to confirm what we say. However, provided that the other conditions are not wanting, the defect of judgment in swearing will not be more than a venial sin, for it is no more than the idle use of the name of God.

It is an insult to God to invoke His testimony to a sinful act or in furtherance of what is sinful. If this is done, the oath is unlawful on account of the want of justice. Justice then in this connection requires that the assertion in an assertory oath should not be sinful, such as a sin of detraction, or boasting about past sins. In a promissory oath, that which is promised must be honest and lawful.

There is some difficulty and dispute among theologians about the gravity of the sin which is committed when an oath wants justice. If in an assertory oath the testimony of God is unjustifiably invoked to promote a seriously sinful object, the want of justice in the oath will be gravely sinful. If, on the contrary, the testimony of God does not further the end in view, the want of justice will probably be only venially sinful, because the assertion is true, as is here presumed, and the irreverence committed against God by invoking His testimony even to a gravely sinful act does not seem to many to be more than a venial sin. An oath, therefore, taken to confirm detraction in a grave matter is mortally sinful; an oath confirming a boast about grave sins committed in the past is probably only venial.

Somewhat similarly in a promissory oath, if the act

promised be gravely sinful, the defect of justice makes the oath gravely sinful; for it is a great insult to God to use His testimony to further what is mortally sinful. If the act promised is only a venial sin, a probable opinion holds that the oath is only venially sinful, against a more probable contrary view.

4. The effect of a promissory oath is to bind the person swearing to do what he promises by an additional obligation derived from the virtue of religion, which requires that out of reverence for God we should religiously perform what we promised under oath. If we fail to do this in a matter of moment, grave sin will be committed, as all acknowledge. Moreover, as is obvious, if when the oath is taken there is no intention of keeping it, a grave sin of perjury is committed, for perjury is never venial on account of triviality of matter. If, however, when the oath was taken there was a serious intention of keeping it, but afterwards there was a failure to do so in a matter of small moment, a probable opinion holds that such a want of fidelity in a small matter cannot be more than a venial sin.

5. The obligation imposed by a promissory oath is of strict interpretation, and follows the nature of the act or contract to which it is annexed, so that it is dependent on all the conditions and limitations with which law, or custom, or the circumstances, invest the act or contract. For a promissory oath is accessory and follows the nature of the principal act to which it is annexed. And so an oath to observe the rules or statutes of a corporation is understood to refer only to those that are in force.

6. An oath should conduce to the service and honor of God; it cannot be a bond of iniquity, and so an oath to do what is wrong is sinful and of no effect. Similarly,

an oath to do what is useless, or which hinders greater good, is null and void. In case, however, another party has acquired rights under an oath, justice requires that this should be kept, and so the mission oath, by which a sworn promise is given to serve a particular church or mission, binds a missionary priest even though he is persuaded that he has a vocation to the religious state.

7. The common opinion of theologians approves and follows a rule of canon law that a promissory oath must be kept whenever it can be without committing sin. This rule was applied to promises sworn to under the influence of grave fear, so that a man who had been captured by brigands and compelled to take an oath to pay a sum of money as ransom, would be bound by his oath unless he could get it dispensed by competent authority. However, another view is becoming prevalent according to which such oaths are null and void, for God cannot be presumed to accept an obligation imposed by fear of unjust violence. The passages in the canon law which afford support to the contrary doctrine are explained as positive enactments, made lest the sanctity and binding force of oaths should be impaired, if the validity of such oaths were not upheld. The conditions of modern life are different, and so we may perhaps say that the former rule is no longer applicable.

8. An oath may cease to bind from intrinsic or from extrinsic causes. If circumstances produce a change in the matter of the oath so that it has become unlawful, or useless, or an obstacle to greater good, or if some condition is not fulfilled, the oath no longer binds. The same must be said when the motive of a promissory oath no longer exists, as if I swore to help a poor person with money who subsequently becomes rich.

An oath may be annulled, dispensed, commuted, or relaxed, in much the same way as a vow, and it will be more convenient to treat of these extrinsic causes for being released from the obligation of an oath in the next chapter, where the doctrine is applicable to vows and oaths alike.

CHAPTER IV

ON VOWS

1. A vow is a promise made to God about something which is good, possible, and better than its omission.

It is then a promise, a contract with God, a deliberate taking on one's self of a new obligation which binds the conscience; and in this it differs from a mere purpose to do better, which imposes no new and special obligation. Such an act must be perfectly human, performed with full knowledge, and with complete use of reason, so that a vow taken by a man who was half drunk, or who had not the full use of reason, would not be valid. A vow, however, does not require actual and explicit consent when the obligation is assumed; it will be sufficient if there is virtual and implicit consent. A person who receives the subdiaconate, to which he knows that the Church has annexed a solemn vow of chastity, takes the vow by the very fact of being ordained, though at the time he is not thinking of it.

A vow in the strict sense is an act of divine worship offered to God alone, and so we cannot take a vow to the Blessed Virgin Mary or to the saints.

The matter of a vow must, of course, be something which is lawful and good; it would be an insult to God to promise Him to do something wrong. It must be something which

is possible, both physically and morally, for there can be no obligation to do what is impossible. A vow, then, to avoid all sin, even the slightest, would be invalid, for without a special privilege of God it is impossible. The matter of a vow must not only be good, but better than its omission or its opposite. For what is promised to God in a special manner and under a fresh obligation must be something that will be pleasing to Him, but a promise to do something which had better not be done cannot be pleasing to God, who desires our perfection.

A vow is absolute when it has no condition attached to it, otherwise it is conditional.

A personal vow makes a promise of some action to be performed; a real vow dedicates a thing to God.

Vows are perpetual if the obligation is undertaken for life; otherwise they are temporary.

A solemn vow is one which is invested by the Church with special force and stability, together with certain legal effects; others are simple. The vows taken by religious in regular orders specially approved by the Pope, and by those who receive sacred orders, are solemn.

2. Substantial mistake about the matter of a vow or about the circumstances which are regarded as entering into the substance of the matter invalidates a vow. For substantial mistake hinders consent of the will; consent was given to something which was not there, and so there was no contract. A vow, then, dedicating to God a chalice which is thought to be silver, while in reality it is gold, would be invalid, just as a sale of it would be under the same mistake. Merely accidental mistake about things of little moment which were not really the motive for taking a vow does not invalidate it. However, according to St.

Alphonsus,[1] it is a probable opinion that a mistake about something connected with a vow, which if it had been known before would have prevented its being taken, is sufficient to invalidate it. This doctrine may be applied to private vows, but it cannot be extended to the vows of religion, which place the religious in a permanent state of life. In order to invalidate these, mistake must be substantial. For just as the perpetuity of the state of marriage, the good of the parties concerned, and the public good, require that only substantial mistake should invalidate marriage, so for the same reasons only substantial mistake invalidates the vows of religion, by which the religious enters into mystical espousals with Christ.

Fear arising from natural causes, provided that it does not take away the use of reason, does not invalidate a vow. If, however, grave fear be unjustly caused with a view to compelling another to take a vow, the vow is null and void. The same is probably true even if the fear be slight. For God cannot be supposed to accept of a promise which has not been freely given, but on the contrary extorted by unjust violence.

3. A vow, as we have seen, imposes a special obligation on him who has taken it to perform what he has promised: "If thou hast vowed anything to God, defer not to pay it; for an unfaithful and foolish promise displeaseth Him: but whatsoever thou hast vowed, pay it."[2] If a special time was fixed for the fulfilment of the vow, with the intention that it should be fulfilled then, and at no other time, it must be fulfilled at the time appointed under pain of sin, and it no longer binds after the time has elapsed. If, on the contrary, it was intended that it should continue

[1] Theol. Mor. 3, n. 226. [2] Eccles. v. 3.

to bind even after the time fixed had elapsed, then the obligation still remains. The obligation should be fulfilled at the proper and reasonable time, and unreasonable delay will be sinful: "When thou hast made a vow to the Lord thy God, thou shalt not delay to pay it. . . . And if thou delay it shall be imputed to thee for a sin." [1] It is not clear, however, whether even notable delay in the execution of a vow is always mortally sinful. Notable delay without just cause would be a mortal sin if the obligation of the vow were grave, and if the delay endangered its execution altogether, or made the matter of the vow notably less than was promised. On the other hand, if a rich man vowed to give a large sum of money to the poor, assigning no particular time for the execution of the vow, it is probable that he would not commit a grave sin, even if he deferred giving the money until his death, and then gave it by his will. For in these circumstances the matter of the vow is not seriously affected by the delay, which therefore cannot be a grave sin.

The measure of the obligation of a vow is the will of him who takes it, much in the same way as the obligation of a law depends on the will of the lawgiver. Ordinarily it will be presumed that in grave matter, such as the Church considers to be sufficient for a precept to bind under mortal sin, a vow also binds under pain of grave sin, for the intention of him who took the vow is presumed to accommodate itself to the matter. Nothing, however, prevents him from limiting the obligation of a vow even in grave matter, so that transgressions of it will be only venial sins, if he expressly intended it. This, however, must not be understood of the essential vows of

[1] Deut. xxiii. 21.

religion, nor of the solemn vow of chastity annexed to sacred orders. These vows are regulated by the Church, and according to her intention they bind under pain of grave sin in grave matter. Another exception must be made to the general rule that the obligation of a vow depends on the will of him who takes it; for if the matter be light it cannot form the ground for a grave moral obligation, when this is imposed by a human will. As a contract binds only the parties who agree to it, so no one can be bound by a vow made by some one else. In former times it was not uncommon for parents to vow a child to religion. Such a vow put no obligation on the child, but the parents were bound by it to give the child the opportunity of entering religion if he desired to do so. There are also instances of communities who have jointly taken a vow to observe a certain day as a fast or a feast. Thus the Romans, in the year 1703, vowed to observe as a fast day the vigil of the feast of the Purification of the Blessed Virgin Mary in thanksgiving for being preserved from an earthquake. The successors of those who took such a vow are bound to fulfil it, much in the same way as they are bound to pay interest on the national debt. Their predecessors had the power to bind themselves and their successors, for the community remains the same moral entity.

We saw above that the matter of a vow must be something which is physically and morally possible. It may happen that he who took the vow may be able to fulfil it in part only and not wholly. He will be bound to do at least this when the matter is capable of being divided and is usually so treated, for the obligation of the vow then falls on the whole and on its several parts. Otherwise he will not be bound, nor will he be bound to do something

which was a mere accessory of the substance of the vow, even if it be possible. And so one who should vow to fast for a week, if he found this impossible, would not be excused from fasting on the days that he could do so. But if he had vowed to build and decorate a church and afterwards found this to be impossible, he would not be bound to build a portion of it, nor to decorate some other church.

4. A vow may cease to bind for intrinsic or for extrinsic reasons. It will cease to bind intrinsically if the matter cease to be a better good, or become impossible. Thus if a young man had vowed to enter religion, but his parents afterward became dependent on him so that he could not leave them without a violation of duty, his vow would cease to bind as long as the same conditions lasted. Or if a wealthy man vowed to spend a considerable sum of money in charities every year, if he became poor his vow would no longer bind him. And generally a vow, like any other promise, will cease to bind if circumstances supervene which at the outset would have prevented the vow from being taken. A vow ceases to bind extrinsically if it is annulled, or dispensed, or commuted. We will treat of these extrinsic causes of the cessation of a vow in the following paragraphs.

5. The annulment of a vow may be direct or indirect. By direct annulment the obligation of a vow is altogether removed by one who has authority over the will of the person who took the vow. For those who are placed in such a state of dependency on their superiors cannot undertake any absolute obligation; they can only bind themselves conditionally, supposing that their superior consents. If he does not consent, the obligation falls to the ground.

By indirect annulment the obligation is suspended by one who has authority over the matter of the vow. For it is not just that an obligation should be undertaken which interferes with the rights of some one else. And so if a servant took a vow to hear Mass every morning, her mistress, whose rights are infringed thereby, might suspend the obligation of the vow as long as the servant remains with her, for no service is rendered to God by injuring a fellow creature. When the term of service expired, the obligation of the vow would revive.

The annulment of a vow will be valid even when it is done without just cause and against the will of the subject, for even then a condition is wanting on which the validity of the vow depended. It will be lawful as well, if there be a reasonable cause, which need not necessarily be a very serious one.

All religious superiors can directly annul the vows taken by their subjects after their religious profession, and indirectly the vows taken by them previously, as far as they prejudice religious discipline or the rights of superiors. The vows of poverty, chastity, and obedience — the essential vows of religion by the taking of which a person becomes a religious — cannot be annulled; for it is only by them that religious superiors receive their authority over the wills of their subjects, and authority is powerless against its own source.

Parents can directly annul the vows of their children taken before the age of puberty, when children become independent of the authority of their parents in matters relating to the service of God. They can indirectly annul the vows of their adult children as long as they continue to live with them.

A husband can directly annul the vows of his wife taken after marriage, and indirectly those taken previously. A wife can annul the vows of her husband only indirectly, as far as they prejudice her rights.

6. A dispensation from a vow is a remission of the vow made in the name of God for a just cause by one who has spiritual jurisdiction in the external forum. The Church has always understood that the power to dispense vows is contained in the authority granted by Our Lord to His Church.[1] She exercises this power in the name of God, not arbitrarily, but for just cause, which is required not merely for the lawfulness, but also for the validity of the act. As examples of a just and sufficient cause theologians give the following: the public good or the private spiritual advantage of him who is dispensed; unusual difficulty in the observance of the vow; the fact that the vow was taken without sufficient deliberation, or in immature age.

The power of dispensing vows belongs to the public authority granted by God to the Church in order that she may rule and legislate for her people. It does not belong to the power of remitting sins which is exercised in the sacrament of Penance. All ecclesiastical prelates, then, who exercise jurisdiction in the external forum in their own name can dispense from vows, except in so far as their authority has been limited by a superior. Other ecclesiastics can only dispense from vows by delegated authority and according to its terms and conditions.

a. The Pope can for just cause dispense any of the faithful from any vow.

b. Bishops can dispense their subjects from all vows which are not reserved to the Holy See. Five vows are

[1] Matt. xviii. 18.

so reserved: the vow of perpetual chastity; the vow to enter religion; the vows to go on pilgrimage to the Holy Land, to the *limina Apostolorum*, and to St. John of Compostella. This restriction of the authority of Bishops is to be strictly interpreted, and so by the vow of chastity is meant a vow of perfect chastity, not a vow of virginity, or of celibacy; by the vow to enter religion is understood a vow to enter a regular order with solemn vows, not a congregation with simple vows.

Bishops in missionary countries ordinarily receive delegated power to dispense from the vow of chastity.

c. Prelates of religious orders have quasi-episcopal jurisdiction over their own subjects, and as a general rule have the same power over these as a Bishop has over his subjects. Besides, they receive by their privileges ample delegated authority to dispense not only their own subjects but seculars and lay people as well. The privileges granted to the respective orders should be consulted concerning this special authority and the conditions of its exercise.

d. Parish priests and confessors have no jurisdiction in the external forum, and can only dispense from vows by delegated authority. They should consult their faculties to know what powers they have received from their Bishop.

When a vow has been made in favor of a third person and accepted by him, such a vow cannot lawfully be dispensed without his consent, otherwise justice would be violated. And so, although a Bishop has power to dispense members of diocesan congregations from the vows of religion, he cannot do this lawfully without the knowledge and consent of the superiors of the order.[1] The religious vows of congregations which have in any way

[1] Constitution of Leo XIII. *Conditæ*, December 8, 1900.

been approved by the Holy See are reserved to the Pope.

The vow of chastity imposes a serious and arduous obligation which should not be undertaken without mature deliberation and knowledge of one's own strength. A confessor should be slow to approve of such a vow being taken, especially if it is to be perpetual. When there is just cause for a dispensation being granted, it is the practice of the Church to commute, rather than altogether to dispense, a perpetual vow of chastity. This practice, though not of obligation, should be adhered to by those who have authority to dispense from this vow. It may be commuted into the obligation of receiving the sacraments at least once a month, saying the rosary every day, or other works of piety.

7. A vow is commuted when another good work to be performed under the same obligation is substituted for that which was promised.

All who can dispense from a vow can also commute it, for the less is contained in the greater. It is obvious, however, that it must not be done to the injury of a third person. The person who is under vow may commute it into some good work which is evidently better than what was promised, for, as the rule of canon law has it, he does not violate his promise who changes it into something better. More probably he may also commute his vow into something that is of equal merit; but to avoid the danger of self-deception, and because it is not easy to say when good works are of equal merit, it is better to have recourse to one's confessor. Special authority is required to commute a vow into something which is less good, for such a commutation is a sort of dispensation from the vow. In order that commutation into something which

is less good may be lawful a just cause is required, though less than is required for dispensation; probably, however, if there be no just cause the commutation will be valid, but the obligation will remain of supplying the deficiency as in human transactions. No special cause is required for commuting a vow into something which is evidently better; greater readiness in fulfilling one's obligation will be a sufficient cause for commuting a vow into something of equal merit.

One whose vow has been commuted is always at liberty to return if he pleases to the observance of his vow, for the commutation was made in his favor, and he may renounce it.

When a vow has been commuted by competent authority its obligation is extinguished, or transferred to the new work, and it does not revive even if the performance of the substituted good work is found to be impossible. On the contrary, when the substitution has been made by private authority, in case the performance of the substituted work is impossible, the original obligation revives.

Part III

THE THIRD COMMANDMENT

The Third Commandment is: "Remember that thou keep holy the sabbath day." [1] This precept of the Old Law is partly ceremonial, and in so far it has been abrogated by the preaching of the Gospel, and partly it belongs to the law of nature, which binds at all times and in all places. The sabbath, the day of rest, was the last day of the week under the Old Dispensation, and the manner of observing it was strictly regulated. The natural law prescribes that we should occasionally offer to God an external and public worship, inasmuch as He is the Creator of body and soul, and the Author of human society. The necessity, too, of keeping up within us a lively sense of God's existence and of our dependence on Him compels us to give outward expression to our religious instincts, otherwise they will quickly evaporate. The Christian Church, using the power given to her by her divine Founder, and asserting her independence of the yoke of Jewish legalism, determined the natural law in this matter by assigning a definite time and mode for its observance. Instead of the last day of the week she chose the first, the day on which Christ rose from the dead, and the day on which the Holy Spirit came down on the Apostles. This she called the Lord's Day, and commanded her children to keep it holy by hearing Mass and resting from servile work.

[1] Ex. xx. 8.

CHAPTER I

ON HEARING MASS OF PRECEPT

1. Ecclesiastical laws of the early Christian centuries show us that the precept of hearing Mass on Sundays dates from the earliest times. This obligation is grave, for Innocent XI condemned a proposition [1] which asserted the contrary. Besides hearing Mass it is a laudable thing to spend some time on Sundays in other acts of piety and prayer, as all good Catholics do. Still there is no other positive obligation besides that of hearing Mass which binds under sin. It is not a sin, then, to omit evening service or Benediction of the Blessed Sacrament; and when it is impossible to hear Mass, there is no strict obligation to have private devotions instead.

In order to fulfil the precept of hearing Mass according to the mind of the Church, the whole of Mass must be heard, in the proper place, while bodily present where it is being celebrated, with devout attention. Something must be said on each of these points.

2. The whole of Mass must be heard, so that at least a venial sin is committed if one be wilfully absent during any portion of it. The sin will not be grave unless a notable part of the Mass be missed. What is a notable part depends partly on its importance, partly on the length or quantity. Inasmuch as the essence of the

[1] Prop. 52.

Mass in all probability consists in the act of consecration, to be voluntarily absent during the consecration would be mortally sinful; one would not have heard Mass. Certainly it is a grave sin to be wilfully absent during both the consecration and the communion. Up to the offertory is called the Mass of the catechumens, and as this forms a kind of introduction to the Mass proper, to come in only at the offertory probably does not amount to more than a venial sin. We may take it as a general rule that a mortal sin is committed if a third part of Mass be missed, and less is sufficient for a grave sin when any action of special importance in the sacrifice is in the portion missed. In case of involuntary absence during a notable portion of Mass there will be an obligation of making it up by hearing that portion of another Mass, if there be an opportunity of doing so on the same day. The consecration, however, and the communion must always be in the same Mass. There is no obligation to make up small portions of the Mass which have not been heard.

A proposition condemned by Innocent XI falsely asserted that one might satisfy the precept of hearing Mass by being present while two portions were being said by different priests.[1]

3. In order to satisfy the precept Mass must be heard in the proper place. By a decree S.R.C., January 23, 1899, the faithful may satisfy the precept by hearing Mass in any public church, or public or semi-public oratory. A semi-public oratory is there defined as one which by the authority of the Ordinary is erected in a place which is not absolutely public but more or less private; for the use not of all the faithful nor of a particular person or family,

[1] Prop. 53.

but of a community or society of persons. No one besides those who are mentioned in the indult can satisfy the precept by hearing Mass in a strictly private oratory, which by an indult of the Holy See is erected in a private house for the use of a particular person or family.

NOTE. — It is quite certain after the decree of the S.R.C. (January 23, 1899) that the faithful by hearing Mass in a semi-public oratory can fulfil their obligation. It is also certain that according to the general law of the Church one does not satisfy the obligation by hearing Mass in a private oratory unless he be one of those included in the indult granted for that oratory. The question, however, may be proposed whether this latter regulation is in force in the United States, or whether there is not some exemption from it, so that a person hearing Mass in a place which is not a church, nor a public nor a semi-public oratory, would fulfil his obligation. Some authors hold that a person in the United States may fulfil the obligation by hearing Mass *anywhere*. Thus Smith in his Elements of Ecclesiastical Law, Vol. 1, n. 655, says: "In the United States the faithful fulfil the precept by assisting at the Holy Sacrifice anywhere." Archbishop Kenrick in his Moral Theology, Vol. 1, Tract. 4, p. 2, n. 14, writes: "*De loco in quo audienda est Missa vix aliquid occurrit dicendum. Constat quidem iis in regionibus in quibus ecclesiastica disciplina viget, in ecclesiis, non autem in privatis oratoriis, eam audiendam, nisi privilegio quis fuerit donatus. His autem in provinciis satisfacit præcepto qui Missam quo libet in loco reverenter audit.*" Sabetti (n. 248) quotes these last words seemingly with approval. Other theological writers such as Konings, Putzer, Tan-

querey, while writing with special reference to the United States upon various questions, omit all mention of this one; nor has any of the theologians of Europe treated the point, as not being of practical importance outside of America. Under these circumstances it seems safe to admit, at least, the practical probability of the opinion of the eminent writers just quoted, so long as the Holy See does not condemn it. — END OF NOTE.

As Benedict XIV teaches,[1] Bishops cannot compel the faithful to hear Mass in their parish churches; they have no power to abrogate a universal custom of the Church, or a decree of the Sacred Congregation of Rites. The liberty, however, of hearing Mass in any place of worship except strictly private oratories does not exempt the faithful from contributing to the support of their own pastors according to their means.[2]

4. One would not hear Mass so as to satisfy the precept if he were stationed apart at a considerable distance from the place where it is being celebrated, even though he might be able to see or hear what was being done. He must be morally present so as to form one of those who are together hearing and offering up the Holy Sacrifice. It is not necessary that he should be able to see the priest, or the altar, nor even to hear what is said. It will be sufficient if he follows the principal parts of the Mass. So that a person could hear Mass if he were stationed in a side chapel of a great cathedral while Mass was being said at the high altar, though he might not be able to hear or see anything that was going on. Similarly, if Mass is being said for a large army or crowd of people, those on

[1] De Synodo, xi, c. 14. [2] 1 West. d. 23, n. 5.

the outskirts of the multitude may hear Mass, though they are at a great distance from the altar. If the church is full and large numbers cannot get inside, still these latter may hear Mass being celebrated inside. On the other hand, if while Mass is being said in a church, some one were posted on the opposite side of a wide street or square, he could not hear the Mass so as to satisfy the precept, though he might be able to see what was going on through the open door.

5. It is necessary to have the intention of hearing Mass, and it must be done with the requisite attention. The Church prescribes a human action to be performed in the service of God, and so there must be the necessary constituents of a human act. The act, then, must be voluntary; there must be the wish or the intention to hear Mass. So that one who was forced to be present against his will, or who came to church merely as a companion to another, or to hear the music, would not hear Mass.

Attention is an act of the mind by which we advert to what is going on. This is attention in the proper sense of the term, and is called internal to distinguish it from external attention, which is the avoidance of any external action which is incompatible with internal attention. Thus if one is distracted during Mass and thinking of other things, but does no external action which is incompatible with hearing Mass, he has external but not internal attention. If during Mass he engages in a prolonged conversation with a neighbor, or reads a profane book, or paints, he has not even external attention.

The Church commands at least external attention while Mass is being said, otherwise the precept will not be ful-

filled. All too admit that voluntary distractions during Mass are venially sinful, just as they are during ordinary prayer. It is a disputed point among theologians whether internal attention is also necessary for the observance of the Church's law. The more common opinion holds that it is. The contrary, however, is probable, for actual attention does not seem to be an essential element of prayer; the form of Extreme Unction, which is a prayer, is certainly valid even if said by a priest without internal attention. The Church's law, therefore, which directly provides for external decorum in the service of God, would seem to be fulfilled, provided that there is at least external attention while hearing Mass. This opinion does not foster the careless hearing of Mass, but it does serve to relieve the scrupulous conscience from needless anxieties.

6. We have here to do with a positive precept, and any serious inconvenience or loss, spiritual or temporal, affecting one's self or one's neighbor, which would follow from hearing Mass, will excuse the faithful from fulfilling the obligation. So that the sick, the convalescent who could not venture out of doors without danger, those who have to take care of the sick, mothers of families who have little children to attend to, those who live at such a distance that it would take them more than an hour to walk to church, all these are excused from hearing Mass regularly.

CHAPTER II

ON SERVILE WORK

1. In order that all and especially the poor may have the opportunity of fulfilling their religious duties, the Church has forbidden servile work to be done on Sunday. Servile work is the rougher and harder sort of manual labor which is done by common workmen and laborers, and which used to be done by slaves. It comprises plowing, digging, building, sewing, and similar occupations. It is distinguished from liberal and from mixed work. Liberal work is done mainly by the intellect, and comprises writing, studying, painting, and so forth. Mixed work comprises a class of occupations which are neither exclusively liberal nor servile, but which are done indifferently by all conditions of men. In this class are hunting, fishing, traveling, and similar occupations. Of these only servile work is forbidden on Sundays, and in determining what is servile work and therefore forbidden, we must consider not only the nature of the work itself, but also the way in which it is done, the light in which it is commonly regarded, and other circumstances. Thus it is usually held that although the rougher work of the sculptor is servile and unlawful, the more delicate is liberal and may be done on a Sunday. Similarly, fishing with rod and line is not unlawful, but going out to sea with a fishing smack and plying the trade in the ordinary

working-day way is forbidden. In the same way one who lives by photography should not ply his trade on a Sunday, but it would not be wrong for an amateur to do the same work on that day by way of recreation and amusement.

2. This part of the precept of keeping the Sunday holy also binds under pain of grave sin. If, however, the matter be light, the doing of a little servile work on a Sunday will be only a venial sin, and none at all if there be good reason for it. According to the common opinion it would be necessary to work for well over two hours at something which is forbidden in order to commit a grave sin. Still longer time would be required for a mortal sin in doing servile work of a lighter kind, which had for it some sort of excuse on the ground that it helps on the cause of religion and charity. Making rosary beads or scapulars belongs to this category.

3. Public trading is also forbidden on Sundays, as well as judicial proceedings in the exercise of contentious jurisdiction, and the solemn and public taking of oaths.

English municipal law goes farther than the law of the Church in its provisions for the due observance of the Lord's Day. Thus not only is Sunday a *dies non* for the sitting of courts or the meeting of public bodies, but contracts such as are within the ordinary calling of tradesmen, workmen, laborers or other persons of the same sort, made and completed on Sunday, are void, and abstention from work and even from play is required by a series of statutes.[1]

NOTE. — All the States and Territories of the Union,

[1] Encyclopedia of Laws, *s.v.* Sunday.

except California and Arizona, have statutes regarding the observance of the Sunday. The general tendency of these statutes is to repress unnecessary labor and to restrain the liquor traffic. There is, of course, a great diversity, both in the scope of the enactments and in the penalties annexed to their violation, noticeable in the statutes of the different States. Thus in Arkansas, besides the prohibition of labor, and the opening of dramshops and groceries, rigorous penalties are inflicted for cock-fighting, card-playing, and hunting with a gun; while in Iowa the statutes forbid fishing and dancing. Although nearly all the States prohibit unnecessary labor, yet in many of them the prohibition is not duly enforced. — END OF NOTE.

Although these provisions of the civil authority do not impose an obligation in conscience under pain of sin, yet indirectly they have caused the Sunday to be observed among us with greater strictness than is absolutely required by ecclesiastical law.

4. As we saw with regard to the hearing of Mass, so in this matter too, if the precept cannot be observed without serious inconvenience, it ceases to bind. And so, work in foundries or in agriculture which cannot be stopped without grave inconvenience and loss may be done on Sundays. Work too in the direct service of religion, or necessary works of charity connected with the care and nursing of the sick, or the burying of the dead, are not forbidden. Custom permits of the sweeping of the house and the cooking of meals, and certain other more or less necessary occupations on Sunday. Finally, ecclesiastical authority can for good reason dispense in the observance

of this law. Not only Bishops, but priests who have the cure of souls have discretionary power to give dispensations in particular cases.[1]

NOTE. — It is not to be inferred from this reference to the First Council of Westminster that Bishops and pastors elsewhere, *e.g.*, in the United States, do not possess authority to dispense for particular cases in the precept of abstaining from servile work. Bishops, parish priests, and generally their assistants exercising pastoral functions can for a just cause dispense one of their subjects from certain ecclesiastical precepts, such as fast, abstinence, and the observance of feasts. Cf. Ball.-Palm. Vol. 1, Tract 3, n. 287; Vol. 4, Tract 9, n. 328. This power given to parish priests is properly extended to pastors in the United States. Cf. Sabetti, n. 100, q. 4. This dispensing power does not appear to have been communicated through any of the plenary or provincial councils of the United States; nor was it necessary. The Fathers of the Third Plenary Council of Baltimore (n. 109) allude to the great difficulty of observing the feasts of the Church as regards the obligation of abstaining from servile works, but do not empower pastors to dispense or grant license to perform servile works on these days. Perhaps it was not the intention even of the First Council of Westminster in Decree 23, n. 1, to give to missionaries having care of souls authority to dispense from the observance of that precept. Those missionaries were told by the Bishops to admonish the faithful that, if they would have to work on certain forbidden days, this should be done "*non propria auctoritate, sed de licentia sacerdotis.*" In this decree there is not, properly speak-

[1] I West. d. 23, n. 1.

ing, question of dispensing, but of a license which is quite distinct from a dispensation, though for practical purposes the result would be the same. It is to be noted that the power of dispensing in the common precepts of the Church possessed by those in care of souls cannot be exercised either licitly or validly without just cause. — END OF NOTE.

Part IV

THE FOURTH COMMANDMENT

The Fourth Commandment is: "Honor thy father and thy mother."[1] By this Commandment not only are children bound to be dutiful in their conduct towards their parents, but these latter are also implicitly bidden to perform all the obligations which nature imposes on them towards their offspring, inasmuch as rights imply corresponding obligations. The mutual obligations of parent and child may be extended to all who hold an analogous position towards each other, and so under this heading theologians commonly treat of the mutual obligations of other relations, and of superiors and subjects, both ecclesiastical and civil.

[1] Ex. xx. 12.

CHAPTER I

ON THE DUTIES OF CHILDREN TOWARDS PARENTS

1. CHILDREN owe their existence to their parents, and for many years until they come to maturity they stand in need of their constant care and direction. It is but right, therefore, that children should love, reverence, and obey the authors of their being and their natural guardians. This is due to parents from their children on account of the special relationship in which they stand towards them, and so, as St. Thomas teaches,[1] there must be a special virtue which regulates the mutual obligations of parent and child. This virtue is called piety in Catholic theology, and it regulates not only the mutual offices of parents and children towards each other, but our duty to other near relatives, and to our country and fellow-countrymen. It is a virtue similar to charity, but it binds more strictly, so that while charity prescribes a general love for all mankind, piety obliges us to a special love for those who are near to us, and for the country in which we were born.[2]

If, then, hatred or want of love for our fellowmen is of itself a grave sin, as we saw above, it will be still easier to commit a grave sin by want of proper affection for our parents. To show dislike of them or contempt for them, or to show that we are ashamed of them, will be a grave

[1] Summa, 2–2, q. 101, a. 3.

[2] St. Thomas, Summa, 2–2, q. 101, a. 1.

sin if our unfilial conduct is likely to cause them serious grief. In the same way serious want of reverence and respect shown in word or action is grievously sinful. To strike a parent or even to threaten to do so will usually be mortally sinful.

By the duty of obedience children are bound to obey their parents in all that belongs to their bringing up and to domestic discipline. Sins of disobedience will be grievous if the matter is sufficiently important and the command is given with the serious intention of imposing a strict obligation.

Children are only bound to support their parents when they cannot support themselves, for whatever property a child may have or may acquire belongs exclusively to him. Among the working classes it is usual for elder brothers or sisters who have begun to work to throw their earnings into the common stock for the support of the family until they leave home and get an establishment of their own. This is quite as it should be, for the money which they earn is scarcely sufficient to pay for their own keep; or if it does more, there are little brothers and sisters or aged parents who are dependent on them, and whom they are bound to help to support.

2. The other obligations of children towards their parents are permanent and last as long as life, but that of obedience ceases with their emancipation. In England, children are emancipated from the control of their parents when they become twenty-one years of age, when they marry, or when they enter into religion; for as soon as they have attained the age of puberty they are independent of their parents in what concerns the salvation of their souls and the choice of a state of life.

NOTE. — According to American law a child may obtain emancipation by other means than those here given for England. An instrument in writing or a parol agreement is deemed sufficient for removing parental control. Various other facts which evince the consent of the parent to relinquish control of the child may be construed into emancipation.[1] In some States of the Union which were once under the dominion of France or Spain (*e.g.*, in Louisiana), statutes have been passed enabling a minor to obtain judicial emancipation, so that before attaining the age of majority he would have all the rights he would possess by reaching that age.[2]

As regards the age at which a minor attains majority and thus becomes emancipated in the United States, the law is the same in some of these States as in England, viz., when the twenty-first year is completed; in others, however, for instance, Vermont, Ohio, Illinois, Missouri, and in many of the Western States, females attain their majority at eighteen. — END OF NOTE.

A minor may also enlist as a soldier without his parents' consent according to English law.

NOTE. — A minor may enlist in the army or navy of the United States; the pay and bounty he receives belongs to himself and not to his father.[3] — END OF NOTE.

Moreover, when a child has attained years of discretion, which he is considered to do at sixteen, it would seem that

[1] See Schouler's Treatise on the Law of the Domestic Relations (5th ed.), n. 267, etc.

[2] Ibid. n. 392.

[3] Ibid. n. 252.

he may lawfully depart from home and provide for himself, if it be for his advantage. This, of course, supposes that the necessities of his parents or of his brothers and sisters do not require that he should remain at home. If a youth has acted in this way, and it appears to be for his benefit, English courts will not compel him to return home, and it was the common teaching of the classical moralists that in acting thus a youth would do nothing wrong.[1]

[1] Laymann, lib. 3, tract. 4, c. 8, n. 13.

CHAPTER II

THE DUTIES OF PARENTS TO CHILDREN

1. NATURE herself teaches parents their duties towards the offspring that they have brought into the world, and which stands in need of their loving care for many years before it arrives at maturity, so as to be able to lead an independent life.

Parents then are bound first and foremost to love their children with that special affection which belongs to the virtue of piety. They will commit grievous sin if they are indifferent to their children's welfare, if they deliberately curse them, if they show great and foolish preference for one child over others to the serious discontent of the latter.

They are bound to support their children until these can support themselves. Even before the child's birth, the mother must take care not to risk its life or natural development. After birth she is bound at least under venial sin to nourish it with her own milk, unless some good reason excuse her. Then there is the obligation of providing sufficiently for the child's maintenance according to its position in life, by a prudent administration of the family property, or by earning money and saving what is necessary for the purpose. Grave sin is committed by a father who will not work, or who squanders his wages

in drink or gambling, so that wife and children are deprived of proper support. Parents are bound to instruct their children in all that is required to enable them to lead a good Christian life; they must warn them of dangers into which their inexperience would lead them, and correct them when they do wrong. Above all they must be careful to give them good example by leading a good Catholic life themselves, and by never being a source of scandal to their children in word or deed. They must watch to see with what companions their children associate, what they read, and what places they frequent.

The Elementary Education Act, 1876, declared it to be the duty of the parent of every child between the ages of five and fourteen years to cause it to receive efficient elementary instruction in reading, writing, and arithmetic; and penalties were imposed on parents who neglected this duty. As such an education can in most cases only be given in a school, it becomes a practical moral question of great importance as to what sort of school Catholic parents should select. The education of their children belongs primarily by the law of nature to the parents, and if they entrust a portion of their task to others they are bound to select such as can and will educate them according to Catholic principles. The Church, too, has received a divine commission to teach, and those who by baptism have become subject to her authority are obliged to be guided by her directions in this all-important matter. The Church condemns all non-Catholic schools, whether they be heretical and schismatical, or secularist, and she declares that as a general rule no Catholic parent can send his young children to such schools for educational purposes without exposing their faith and morals to serious

risk, and therefore committing a grave sin. A Catholic child if educated away from home should be placed in a Catholic school, under Catholic masters or mistresses. Sad experience in many different countries has shown how necessary this is for the preservation of the Catholic faith. If, however, there is no suitable Catholic school to which children can be sent, they may be sent to a non-Catholic school provided that the proximate danger can be made remote by using the proper means, and provided that the parents see to the religious instruction of their children. In many countries, as in England, the Bishops have reserved to themselves the decision as to whether in any particular case these conditions are fulfilled. A priest, therefore, should not take it upon himself to deny the sacraments to parents who send their children to a non-Catholic school; the case should be sent to the Bishop.[1]

NOTE. — That the Bishop in regard to his own diocese is to be the judge of the obligation of sending children to parochial schools, is evident not only from the Third Plenary Council of Baltimore (n. 194–199), but also from a response of the Cardinal Prefect of the Propaganda to a Bishop of the United States, dated February 4, 1895, which is as follows: "*Quoad modum obligandi Catholicos genitores, ut filios mittant ad scholas parochiales, id relinquitur prudenti judicio Ordinariorum, qui attentis specialibus adjunctis temporum, locorum et personarum, in quibus versantur, id pro sua sapientia decernunt quod magis expediens et efficax existimant pro attingendo exoptato fine.*" Hence if a Bishop declare that in his diocese parents are prohibited *sub gravi* from sending their children to the public schools,

[1] Conc. Plen. Balt. 3, tit. 6.

no confessor can absolve such parents as are disposed to continue sending them to those schools. The Bishop may even make such disobedience a reserved censure. On the other hand, if in a given case or in a class of cases the Bishop judge that Catholic children of his diocese may be permitted to attend non-Catholic schools, it is not lawful for a confessor on this ground to refuse absolution to such children or their parents. It is not always necessary to refer each individual case to the Bishop, who may make known by diocesan statute or otherwise to the priests of his diocese the course to be followed. Thus in the archdiocese of St. Louis, parents are strictly forbidden by diocesan statute (n. 130) to send their children to public schools in those localities where there exist parochial schools; so that absolution is to be denied to any one refusing to satisfy this obligation; and immediately after in the same statute the following words are found: "*Casus in quibus huic regulæ strictæ exceptionem fieri posse videatur Rectorum judicio et conscientiæ dirimendos relinquimus.*" — END OF NOTE.

2. What has just been said applies specially to primary and secondary schools, for the question about non-Catholic universities is somewhat different. The Church would indeed wish that all who desire it might be able to obtain a higher education in a Catholic university. As this, however, is impossible in England, the Holy See has permitted Catholic parents to send their sons to Oxford or Cambridge on account of the grave necessity, and because when a young man has already received a sound secondary education among Catholic surroundings, if there is any character in him, he can be trusted to hold his own.

Suitable safeguards, however, are prescribed for the young men who avail themselves of this permission, among which is the obligation of attending Catholic lectures which are provided by the Bishops.

NOTE. — In the United States there is no permission granted by the Holy See to attend non-Catholic universities such as English Catholics have received for attending the universities of Oxford and Cambridge. The question is a practical one, whether it is allowable for Catholics in this country to be students in non-Catholic universities and colleges. There may be and there sometimes is for particular students the proximate danger of loss of faith or morals, which those students will not or cannot make remote. Such students, it need hardly be said, are forbidden *sub gravi* by natural law to go to or remain at those institutions. Viewing the question apart from this supposition of proximate danger, which, however, is by no means theoretical, it is useful to recall what the Third Plenary Council of Baltimore has set down in the chapter, *De Superioribus Scholis Catholicis*. It is quite evident that the Fathers of the Council were not in favor of sending Catholics to secular colleges and universities, for they say in n. 208: "*Nimis frequenter enim accidit, ut ii qui pueri pii ac puri e sinu familiæ Christianæ et de sub tecto scholæ Catholicæ in collegia acatholica transeant, scientia quidem inflati, caritate vero,* i.e., *fide moribusque Christianis privati revertantur.*" In n. 210 we find as follows: "*Parentes in Domino hortamur, ut adolescentes suos, quibus, scholis parochialibus absolutis, superiorem educationem procurare velint, in Catholicas scholas superiores jam nunc existentes mittant.*" Now, while the Bishops here indicate their earnest desire that

Catholic youth seeking a higher education would attend Catholic institutions of learning for this purpose, they do not express a strict prohibition to their going to non-Catholic colleges or universities. Rather they seem to convey the idea that there may be circumstances in which it would not be forbidden to send Catholics to non-Catholic schools, for immediately after the words just quoted they add: "*Si vero scholæ Catholicæ filiis suis pro speciali quem sequuntur studiorum cursu desint eosque ob hanc causam ad scholas acatholicas mittere cogantur, enixe eos monemus, ut fidei morumque pericula a filiis suis quam longissime removeant, verbi Domini semper memores: 'Quid prodest homini,* etc.'" In order that attendance at non-Catholic colleges or universities be not forbidden to Catholics, two conditions are required. The first is a grave cause. This condition may fairly be considered as existing when a Catholic wants to acquire some technical or professional instruction which he could not acquire at a Catholic college or university within his reach. The second condition required is that suitable means are to be employed in order that danger to faith and morals be rendered remote. Under this condition there is included on the part of the Catholic student an obligation to receive religious instruction from a Catholic teacher, or to devote himself to the study of Catholic doctrine during the period of his attendance at non-Catholic institutions, or to make use of some similar means so as to effectually strengthen himself against the dangers inherent in a godless system of education. Hence if this student should refuse to employ some such necessary safeguard, he cannot be admitted to the sacraments; also, if, before his entrance into the college or university, he do not resolve to fulfil this obligation, he cannot

be absolved. Similarly, if the parent of such student permit him or her to remain at the non-Catholic college or university, that parent, father or mother, cannot be absolved. The reason is the same for parent and child, viz., refusal to perform a grave obligation. In laying down those two conditions as necessary for licit attendance, it is not to be considered that each condition is equally obligatory in conscience. If the second condition be fulfilled, *i.e.*, if the danger to faith and morals be made and kept remote by use of the necessary means, the non-observance of the first condition in the absence of positive legislation would not oblige the confessor to refuse absolution.

On the question of attending non-Catholic schools, primary, intermediate, and university, the Holy See has issued many pronouncements. Some of these will be found in the Collectanea de Prop. Fide as follows: n. 469, 471, 472, 476, 477, 478, 479, 480, 481 (Instructio S.C.S. Off. ad Ep. St. Feder., November 24, 1875), and 482. The reader will also do well to consult Ball. Palm., Vol. 2, p. 585, 586; Genicot, Vol. 1, n. 352; Lehmkuhl, Vol. 1, n. 786, 787; Noldin, De Præceptis Dei et Ecclesiæ, n. 292; Bulot, Theologia Moralis, Vol. 1, n. 370; Ferreres, Vol. 1, n. 376.

It may be noted that in giving permission, or more accurately, temporary toleration, for Catholics to attend the universities of Oxford and Cambridge, the Sovereign Pontiff required regular courses of instruction in religion, philosophy, and history to be given there by Catholic teachers. It is safe to say that if the Holy See should ever grant leave or toleration for Catholics to be students of non-Catholic universities or colleges in the United States, the Sovereign Pontiff will not be content with the requirements of natural law as indicated in the two conditions

given above; but, in order to duly safeguard that law, will insist upon conditions similar to those set down for the attendance of Catholics at the two English universities.

It need hardly be remarked that the student is prohibited *sub gravi* from joining in the religious services conducted by a non-Catholic in the college or university, even though no heretical doctrine be conveyed therein. — END OF NOTE.

3. In order that parents may fulfil their obligations towards their children, the law of nature itself confers on them the requisite authority, and the right to look after their children until these can provide for themselves. It would then be against natural justice if children were removed from their parents' control or if there were any interference with the parental authority as long as it is rightly exercised.[1] Although parental authority is derived from the law of nature, yet its precise extent and its limits are not defined by natural law; this is left to positive law, ecclesiastical and civil.

Parental authority extends to the person and to the property of a child.

I. *a.* The right to the custody of the person of a child belongs to the father during his life, and after his death to the mother. Until emancipation at the age of twenty-one, or until marriage, a father can enforce his right by writ of *habeas corpus.*

NOTE. — Regarding the parental custody of the child according to the law in the United States, Schouler (Domestic Relations, n. 248), has the following:

"In this country the doctrine is universal that the courts

[1] St. Thomas, Summa, 1–2, q. 10, a. 12.

of justice may, in their sound discretion, and when the morals or safety or interests of the children strongly require it, withdraw their custody from the father and confer it upon the mother, or take the children from both parents and place the care and custody of them elsewhere. The rule as to legal preference is essentially that of the common law, with, however, an increasing liberality in favor of the mother, strengthened, in no slight degree, by positive legislation. Our rule of procedure is somewhat different from that noticeable in the English system. For though sometimes the right of custody is to be determined by *habeas corpus*, and sometimes by proceedings in equity, while very frequently incidental to divorce suits; in any case, the circumstances will be fully considered by the court, and a decision rendered on general principles of justice. Nor is the decision so permanent that a change of circumstances might not lead to a change of custody." — END OF NOTE.

An action also lies for loss of services against any one who entices a minor away from the custody of his parents. Moreover, abduction of a girl under sixteen or under eighteen for immoral purposes is rigorously punished by English criminal law.

However, if a child who has reached years of discretion chooses to depart from home, our courts will not compel him to return, if the departure seems to be for his benefit.

b. A parent or one who is *in loco parentis* may moderately chastise a minor who has been guilty of fault.

c. The consent of the parent is required for the lawfulness of a minor's marriage.

II. The parent as such has no rights over the property

of his child according to English law. If, however, no other guardian has been lawfully appointed, the father will be regarded as the guardian of his child and he will be compelled to administer its property for its benefit, and he can be compelled to render an account of his administration. Gifts which have been freely made by children to their parents are considered valid by our law, but there is a presumption against their being free gifts, unless this is proved.

4. The duties of parents extend to illegitimate as well as to legitimate children. The duty of caring for an illegitimate child falls primarily on the mother, who, before a year has elapsed from its birth, may obtain from the magistrates a maintenance order against the reputed father, providing for the child's support and education at his expense.

A husband is bound by our law to support the children of his wife by a former husband as well as his own.

NOTE. — On this point the law in the United States differs somewhat from the English law. "In the absence of special statutes to the contrary the father-in-law is not obliged in this country to maintain his step-children."[1] The same author in the next paragraph says: "The husband is not liable for the expenses of maintaining his wife's mother, nor the father for the daughter's husband; nor a man who marries for his pauper step-children." — END OF NOTE.

[1] Schouler's Domestic Relations, n. 237.

CHAPTER III

THE DUTIES OF RELATIVES AND GUARDIANS

1. What has been said concerning the mutual obligations of parent and child applies proportionately to those of other near relations. These are also bound to love each other not only out of charity, but out of piety, and they are under a grave obligation of rendering each other assistance not only in extreme but also in grave necessity. English law only enforces on relatives the obligation of maintaining a poor relation who is unable to support himself when he would otherwise be chargeable to the parish where he happens to be. Those who are so compellable are the wife and husband, the father and grandfather, the mother and grandmother, or the children of the pauper. The law of charity and piety obliges more frequently and extends further.

2. Guardians are sometimes appointed according to law to take care of the person and property of minors.

Parents are legally the guardians by nature and nurture of the persons of their children until these reach the age of twenty-one, as we saw above.

Of the many kinds of guardians recognized by English law the following are still of practical importance: Statutory guardians, guardians appointed by the high court, and guardians appointed for special purposes.

a. Statutory guardians. By a statute of Charles II a father may appoint by deed or by will a guardian or

guardians to have the custody of his infant child, and to manage its property until it reach the age of twenty-one. The Guardianship of Infants Act, 1886, made the mother on the death of the father the guardian of her infant children, either alone if no guardian was appointed by him, or jointly with the guardian or guardians appointed by the father. The mother can also by deed or will appoint one or more guardians to act after her death and that of the father. She may also appoint a guardian to act provisionally after her death jointly with the father.

NOTE. — In some of the States a guardian can be appointed by the parent, not by deed, but by will only, as in Ohio, while in others a guardian can be appointed by deed also, as in England. Most of the States limit the power of appointment to the father; a few, like Illinois, give authority to the mother if not remarried, when no appointment was made by the father. A testator can appoint a guardian over his own children only, not over other children to whom he bequeathes his property.[1] — END OF NOTE.

b. Guardians appointed by the high court. An infant may be made a ward of court by settling a sum of money on it and bringing a suit for its administration. This may be done even though the father be still alive, or a testamentary guardian has been appointed. Where the court is satisfied that it would be for the good of the ward, it may remove a guardian from his office and appoint another in his place, even though the infant be not a ward of court.

[1] Cf. Schouler, n. 290.

NOTE. — In the United States the probate courts and in some of the States other courts exercising common law functions possess authority to designate a guardian. The Supreme Court in some States possesses full power over the person and estate of minors, taking them under its protection as wards of the court, ordering investments in their behalf and regulating the conduct of guardians. In the United States compensation is allowed to the guardian, but not in England, where the honor of the office is deemed sufficient to counterbalance the labor and responsibility of its duties.[1] — END OF NOTE.

c. Guardians for special purposes are sometimes appointed to consent to an infant's marriage, or for some other object under different statutes.

A guardian has a right to the custody of the person of his ward, and in general he exercises the rights, and is under the obligations of a father towards his ward. He administers the ward's property and must render an account of his administration.

No one may marry a ward of court or remove it out of the jurisdiction without the court's permission.

NOTE. — No such prohibition exists in the United States, preventing a person from marrying a ward of court.[2] — END OF NOTE.

The wishes of the father, as a general rule, according to English law, must be followed with regard to the religion in which a ward is educated by his guardian.

[1] Cf. Schouler, n. 375. [2] Ibid. n. 390.

CHAPTER IV

THE OBLIGATIONS OF HUSBAND AND WIFE

Besides the obligations which are treated of under Marriage, and the rights and obligations arising out of property belonging to married people, which are discussed under the Seventh Commandment, there are certain obligations arising from marriage inasmuch as it places the husband in a position of authority and the wife in one of subjection. A word must here be said concerning their mutual obligations in this respect.

The wife becomes by marriage subject to her husband, and owes him love, reverence, and obedience, as to a superior. "Let women be subject to their husbands as to the Lord," says St. Paul. "Because the husband is the head of the wife: as Christ is the head of the Church . . . Therefore as the Church is subject to Christ, so also let wives be to their husbands in all things."[1]

However, a wife is not the slave or servant of her husband, but rather his companion, and so though subject and bound to obey in all that relates to family life and conduct, yet she should be treated with love, consideration, and deference, and consulted in what concerns the family affairs.

The wife will commit grave sin if she shows great contempt for her husband, habitually neglects his commands, and arrogates his authority to herself without just cause.

[1] Eph. v. 22–24.

The husband is bound to support his wife and family according to English law, who therefore have a claim in justice upon him as well as in piety. The husband sins grievously by treating his wife with habitual harshness and neglect, and by not providing for her necessities and those of her children. In this latter case the wife would not be guilty of sin if she took from her husband without his knowledge what was necessary for the decent support of the family.

CHAPTER V

THE DUTIES OF MASTERS AND SERVANTS

1. SERVANT is here understood in a wide sense so as to comprise both domestic servants and workmen who work for a master. The relation in modern times arises out of a contract freely entered into by the parties, and it is less intimate than that which in ancient times subsisted between the lord and the slave or serf. In spite of this, however, the nexus of cash payment is not the only bond between master and servant. By the very fact that one enters into the service of another, the latter becomes his superior, assumes the duty of caring for him, and in fitting proportion he acquires a claim to those marks of honor and reverence which are due to all who exercise authority over us.[1]

2. Servants then owe to their masters reverence, fidelity, and obedience.

a. They are bound to show their masters due honor and respect, and grave sin may be committed by displaying open contempt for them, ridiculing them, and making known their secret defects. "Whosoever are servants under the yoke, let them count their masters worthy of all honor."[2]

b. They must faithfully discharge the duties imposed on them by the nature of their charge. If they waste

[1] St. Thomas, Summa, 2–2, q. 102, a. 1. [2] 1 Tim. vi. 1.

the time which belongs to their master, wilfully neglect their duties, damage or destroy the property of their master by not taking ordinary care of it, they sin against justice and are bound to restitution. If special charge of what belongs to the master is committed to a servant, he will be obliged to guard it against damage or loss caused by others, and he will sin against justice and be bound to make restitution if he fail to do so. Where no such special charge has been laid on a servant, he will only be bound in charity, not in justice, to protect the property of his master.

c. A workman who does not live in his master's house will be bound to obey his master's commands in all that relates to the work that he undertook to do.

A domestic servant is a member of the master's household, and the obligation of obedience extends to what concerns domestic discipline, as well as to the special work which was expressly undertaken by the contract. "Servants," says St. Paul, "be obedient to them that are your lords according to the flesh, with fear and trembling in the simplicity of your heart, as to Christ: not serving to the eye, as it were pleasing men, but as the servants of Christ, doing the will of God from the heart, with a good will serving, as to the Lord, and not to men." [1] Still one who contracted to be a cook would not be bound to obey if ordered to do housemaid's work; neither explicitly nor implicitly was such an obligation undertaken when the contract was entered into.

These duties of a servant toward his master are touched upon by Leo XIII in his encyclical letter on the condition of the working classes, May 15, 1891. "Thus religion

[1] Eph. vi. 5–7.

teaches the laboring man and the artisan to carry out honestly and fairly all equitable agreements freely entered into; never to injure the property, nor to outrage the person, of an employer; never to resort to violence in defending their own cause, nor to engage in riot and disorder; and to have nothing to do with men of evil principles, who work upon the people with artful promises, and excite foolish hopes which usually end in useless regrets, followed by insolvency."

3. The duties are not all on one side and the rights on the other in the relation of master and servant. Each has his rights and each his duties, and their good and the good of the community largely depends on both sides faithfully and loyally fulfilling their mutual obligations.

a. A master must treat his servant not as a mere instrument of production, but as a fellow Christian: "Religion teaches the wealthy owner and the employer that their work-people are not to be accounted their bondsmen; that in every man they must respect his dignity and worth as a man and as a Christian; that labor is not a thing to be ashamed of, if we lend ear to right reason and to Christian philosophy, but is an honorable calling, enabling a man to sustain his life in a way upright and creditable; and that it is shameful and inhuman to treat men like chattels to make money by, or to look upon them merely as so much muscle or physical power." [1]

b. "Again, therefore, the Church teaches that, as religion and things spiritual and mental are among the workingman's main concerns, the employer is bound to see that the worker has time for his religious duties; that he be not exposed to corrupting influences and dangerous occasions,

[1] Leo XIII, l. c.

and that he be not led away to neglect his home and family, or to squander his earnings." [1] The general obligation of fraternal correction will more frequently impose a duty on the master of admonishing and correcting a domestic servant than an ordinary workman of his.

c. "Furthermore, the employer must never tax his work-people beyond their strength, or employ them in work unsuited to their age or sex." [2]

According to English common law the contract between employer and employed involves on the part of the former the duty of taking reasonable care to provide appliances and to maintain them in a proper condition, and so to carry on his operations as not to subject those employed by him to unnecessary risk. This common law liability has been further increased and defined by the Employers' Liability Acts and Workmen's Compensation Acts, which, however, will as a rule only affect the conscience after the sentence of a competent authority, except in so far as there was grave culpable negligence on the part of the employer.

d. The employer's "great and principal duty is to give every one a fair wage. Doubtless before deciding whether wages are adequate, many things have to be considered; but wealthy owners and all masters of labor should be mindful of this, that to exercise pressure upon the indigent and the destitute for the sake of gain, and to gather one's profit out of the need of another, is condemned by all laws, human and divine. To defraud any one of wages that are his due is a crime which cries to the avenging anger of heaven. *Behold, the hire of the laborers . . . which by fraud hath been kept back by you, crieth aloud; and the cry of them hath entered into the ears of the Lord of Sabaoth.*[3]

[1] Leo XIII, l. c. [2] Leo XIII, l. c. [3] St. James, v. 4.

"Lastly, the rich must religiously refrain from cutting down the workmen's earnings, whether by force, by fraud, or by usurious dealing; and with all the greater reason because the laboring man is, as a rule, weak and unprotected, and because his slender means should in proportion to their scantiness be accounted sacred. Were these precepts carefully obeyed and followed out, would they not be sufficient of themselves to keep under all strife and all its causes?" [1]

Sums must not be deducted from a servant's wages on account of temporary illness, though by English law a master is not bound to provide medical aid or medicines for a sick servant, though he is for an apprentice. If he sends for medical assistance for a servant whilst under his roof he is liable.

In the same encyclical of Leo XIII a general rule is laid down for deciding what a fair wage is: "Let it then be taken for granted, that workman and employer should, as a rule, make free agreements, and in particular should agree freely as to the wages; nevertheless, there underlies a dictate of nature more imperious and more ancient than any bargain between man and man; namely, that the remuneration must be sufficient to support the wage-earner in reasonable and frugal comfort. If through necessity or fear of a worse evil the workman accept harder conditions, because an employer or contractor will afford him no better, he is made the victim of force and injustice."

The workman, then, has a right to a living wage, and the employer who grows rich by sweating his work-people commits a sin against justice and is bound to make restitution of his ill-gotten wealth. If, however, the employer

[1] Leo XIII, l. c.

gives as good wages as he can afford, or as good as the labor is worth, he will be excused from any sin against justice; occasionally in bad times he may be bound out of charity to give employment without profit to himself or even at a personal loss.

4. It is sometimes the duty of the State to interpose its authority in order to settle labor questions. As Leo XIII says: "If by a strike, or other combination of workmen, there should be imminent danger of disturbance to the public peace; or if circumstances were such that among the laboring population the ties of family life were relaxed; if religion were found to suffer through the operatives not having time and opportunity afforded them to practise its duties; if in workshops and factories there were dangers to morals through the mixing of the sexes or from other harmful occasions of evil; or if employers laid burdens upon their workmen which were unjust, or degraded them with conditions repugnant to their dignity as human beings; finally if health were endangered by excessive labor, or by work unsuited to sex or age — in such cases there can be no question but that, within certain limits, it would be right to invoke the aid and authority of the law." A little further on Pope Leo again refers to strikes: "When workpeople have recourse to a strike, it is frequently because the hours of labor are too long, or the work too hard, or because they consider their wages insufficient. The grave inconvenience of this not uncommon occurrence should be obviated by public remedial measures, for such paralyzing of labor not only affects the masters and their workpeople alike, but is extremely injurious to trade and to the general interests of the public; moreover, on such occasions, violence and disorder are generally not far distant,

and thus it frequently happens that the public peace is imperiled. The laws should forestall and prevent such troubles from arising; they should lend their influence and authority to the removal in good time of the causes which lead to conflicts between employers and employed."[1]

It is unlawful for workmen to strike when by so doing they violate a just contract which they have freely entered into, or when they cannot hope to gain anything substantial, so that there is no adequate compensation for the sufferings, losses, and risks, which generally accompany a strike. It is wrong to use violence and threats to compel other workmen to strike against their will, or to prevent them accepting work, if they desire to do so.

If, however, other means of obtaining redress or of securing their rights have failed, it is not wrong for workmen to strike in order to obtain a diminution of excessive hours of toil, or a just wage, or other just, reasonable, and adequate advantage.

5. The contract of hiring may be terminated by mutual consent of the parties concerned, or for just cause by one of the parties, provided that the laws and customs which regulate the matter be duly observed. Generally speaking, a month's notice, or a month's wages, is required by English law to determine a general hiring of a domestic servant. If, however, the servant is incompetent to do what he undertook, is habitually disobedient, or is guilty of immorality, or unlawfully absents himself from his work, he may be dismissed without notice.

[1] Leo XIII, l. c.

CHAPTER VI

THE DUTIES OF MASTERS AND SCHOLARS

1. Schoolmasters and schoolmistresses are put in the place of the parents to educate children in letters and good conduct. They therefore to a certain extent share the obligations and the rights of parents. Furthermore, they are bound in justice by contract to fulfil the special duties which are annexed to their office of training the children committed to their charge.

2. Pupils are bound to love, reverence, and obey their masters and mistresses in all things that pertain to their education in letters and morals. However, in estimating the gravity of sins of disobedience toward masters and mistresses, we must consider not only whether the matter be grave and there be a serious intention of imposing an obligation, as in other cases of disobedience, but also whether the authority of the master or mistress enables them to give a precept which binds under pain of grave sin. Such ample authority is usually not committed to inferior masters and mistresses.

CHAPTER VII

THE DUTIES OF ECCLESIASTICAL AND CIVIL RULERS AND THEIR SUBJECTS

1. All those to whom the care of souls is committed in the Church of God are bound by divine precept and by the very nature of their office to fulfil the duties of their charge.[1] If they fail in their duty, they sin not only against charity and obedience, but also against justice; for every one who voluntarily undertakes an office implicitly thereby undertakes to discharge the duties annexed to it. In general, therefore, ecclesiastical superiors are bound to love, watch over, and instruct by word and by example those committed to their charge. The special obligations of each one depend on the office which he holds, and are treated of elsewhere.

2. Subjects also owe to their ecclesiastical superiors love, reverence, obedience in all that belongs to their office, and temporal support. This is obvious from what has already been said, and it is inculcated in several places of Holy Writ.[2]

3. It has been the constant teaching of the Catholic Church that all public and legitimate authority is of divine right, in the sense that God is the Author of man's nature by which he is a social animal, formed to live in society,

[1] Trent. sess. 23, c. 1, de Ref.
[2] 1 Tim. v. 17; Heb. xiii. 17.

which necessarily implies a distinction of rulers and ruled. The rulers may, indeed, be designated in various ways, their power may be more or less absolute; this power may be in the hands of one or of many, but it is derived from God, the Author of man's nature and of human society. This is the teaching of St. Paul: "Let every soul be subject to higher powers; for there is no power but from God; and those that are, are ordained of God. Therefore he that resisteth the power, resisteth the ordinance of God. And they that resist, purchase to themselves damnation."[1] As Leo XIII says in his encyclical letter, *Diuturnum*, June 29, 1881, this doctrine is taught in many passages of Holy Writ, and has been constantly inculcated by the Catholic Church.

In English-speaking countries the people have a large share in the election of their rulers, and such an important duty should be faithfully and religiously fulfilled. There may easily be a moral obligation to vote at elections in order to prevent the election of one who would do grave public harm if elected, or in order to secure the election of one whose election would be a great public benefit. If the only choice lies between candidates who are equally good or equally bad, there will be no moral obligation to vote.

Those who hold any civil office are bound to perform its duties faithfully, not only out of charity but out of justice.

4. For Catholics it is a matter of religious obligation to love, reverence, and obey those who wield civil power. As Leo XIII teaches: "We are bound to love dearly the country whence we have received the means of enjoyment this mortal life affords, but we have a much more urgent

[1] Rom. xiii. 1–2.

obligation to love with ardent love the Church to which we owe the life of the soul, a life that will endure forever. . . . Moreover, if we would judge aright, the supernatural love for the Church and the natural love of our own country proceed from the same eternal principle, since God Himself is their Author and originating Cause. . . . Law is of its very essence a mandate of right reason, proclaimed by a properly constituted authority, for the common good. But true and legitimate authority is void of sanction, unless it proceed from God, the supreme Ruler and Lord of all. The Almighty alone can commit power to a man over his fellowmen; nor may that be accounted as right reason which is in disaccord with truth and with divine reason; nor that held to be true good which is repugnant to the supreme and unchangeable good, or that wrests aside and draws away the wills of men from the charity of God. Hallowed, therefore, in the minds of Christians is the very idea of public authority, in which they recognize some likeness and symbol, as it were, of the Divine Majesty, even when it is exercised by one unworthy. A just and due reverence to the laws abides in them, not from force and threats, but from a consciousness of duty; for God hath not given us the spirit of fear."[1]

[1] Leo XIII, Encyclical Letter, January 10, 1890.

Part V

THE FIFTH COMMANDMENT

The Fifth Commandment is, "Thou shalt not kill."[1]

The crime of homicide is primarily forbidden by this precept, but inasmuch as quarreling, fighting, wounding, lead up to homicide, these and similar acts are secondarily forbidden. Implicitly, the precept prescribes the preservation of life, since death will follow if care be not taken to preserve life.

[1] Ex. xx. 13.

CHAPTER I

ON SUICIDE

1. SUICIDE, or the killing of one's self, when one's own death is the direct and immediate object of the will, is forbidden by the Fifth Commandment and is grievously sinful. It is the same when death is not the direct object of the will, if some act is done of which the only immediate effect is the destruction of one's own life; for in that case by willing the action I implicitly will the effect. And so if, out of bravado, I jumped from the top of the tower of Westminster Cathedral into the street below, I should be guilty of the grave sin of suicide, even though that was not my direct object.

The reason why suicide is unlawful is because we have not the free disposal of our own lives. God is the Author of life and death, and He has reserved the ownership of human life to Himself. We cannot leave the post where He has stationed us without His authority. Moreover, a man belongs to his country, and so suicide is a crime against the commonwealth, and as such is punished. There is a controversy among divines as to whether it would be lawful for a malefactor, who had been condemned to death and entrusted by public authority with the execution of the sentence against himself, to take his own life. Many hold that it would be lawful, for there seems no conclusive reason why the State might not appoint a man to be his own executioner.

2. It is not unlawful to do something which will cause one's own death, provided that the action has some other immediate and good effect of great importance, which counterbalances the loss of human life, and this is not intended. This is merely an application of the principle of a double effect which was explained in the Book on Human Acts. The captain of a man-of-war, for example, which in time of war is in danger of falling into the hands of the enemy, might blow up the ship in order to prevent so great a disaster befalling his country, although the act would cause his own death and that of others in the ship. He does not intend the destruction of human life; the immediate effect of his action is to prevent the ship falling into the enemy's hands. The public advantage counterbalances the loss.

3. Similarly, for good reason I may undertake dangerous work, go to unhealthy climates, or lead a kind of life which will lessen the number of years that I shall live. Somebody must do such things; they are useful to the community, or to myself, and I do not intend the shortening of my life. It would be wrong to expose my life to probable danger merely for the sake of getting money, or notoriety; such reasons do not justify us in seriously risking human life.

4. As we have not the ownership of life, so neither are we the owners of our limbs so as to be able to dispose of them at will. A man is not justified in mutilating himself in order to avoid military conscription, or to excite commiseration, or to gain money. The amputation of a limb is permissible when such an operation is necessary in order to preserve life; for we may sacrifice a part for the safety of the whole.

5. We are obliged to take ordinary means to preserve our lives, for to do otherwise would be virtually to commit suicide. There is no obligation to take extraordinary, unusual, or very painful or expensive means to preserve our lives. And so one in feeble health, who will probably die if he spends the winter in England, is not bound to expatriate himself and go and live in a milder climate. Nor am I bound to undergo a painful and costly operation in order to save my life; I may if I like choose rather to die, unless my life is of great importance for the common good, for then the public good must be considered first. Except in such a case as this, a superior could not oblige a subject to undergo a very painful operation, or to submit to the amputation of a leg; obedience to human authority does not seem to extend to such matters as these.

CHAPTER II

ON CAPITAL PUNISHMENT

1. The right of the State to punish criminals with the infliction of death is either expressly conceded or clearly supposed in Holy Scripture.[1] It is sufficiently evident, too, from natural reason, for the State should be endowed with all those powers which are necessary to secure its end, the temporal happiness of its citizens. But it would not be possible to keep human passion within bounds and ensure the safety of the lives and property of its peaceful citizens, unless the State had the power of inflicting death on those who have been guilty of great crimes. The practice of the most civilized states confirms this view, and experience seems to demonstrate its truth. If the time should ever come when the infliction of less severe penalties will suffice to punish crime and safeguard life and property, then capital punishment should be abolished, but that time does not seem to be at hand yet.

If the State has the right to deprive a criminal of life, *a fortiori* it may inflict lesser punishments, such as flogging and imprisonment. Indeed, certain persons who have authority over others, such as fathers of a family, captains of vessels at sea, and schoolmasters, have the power to inflict smaller punishments in moderation on delinquents under their authority. Before capital punishment can be inflicted the essentials of a judicial process by which a grave crime is brought home to the delinquent

[1] Rom. xiii. 4.

must be gone through. For the right of capital punishment belongs to the State as such, to the public authority, and so before punishment is inflicted it should be proved that the crime was committed by the person charged, and judicial sentence according to law should be passed upon him. In certain cases when the ordinary process of law cannot be followed, and there is danger in delay, the public authority might empower any one to kill a notorious criminal, but in settled times and ordinarily this should not be done. It would be a very dangerous remedy for crime if the State empowered its citizens to punish delinquents without previous trial and conviction. The innocent sometimes suffer in spite of the elaborate precautions and delay of modern criminal trials. If these were abolished and every citizen became a judge and executioner for crime the remedy would be far worse than the disease. The Roman law and that of some more modern states permitted a father or husband to kill a daughter or wife found in adultery. Such laws were not approved by the Church, and they could not in conscience justify one who took advantage of the immunity they gave to commit so cruel a murder.

2. To take means to safeguard the public welfare, and especially to inflict the punishment of death on criminals, belongs to the public authority and not to private citizens, and so these cannot lawfully arrogate to themselves the power of inflicting capital punishment. Lynch-law, then, is against sound principles of morality. In places where no effective government exists, the people should constitute a government to safeguard the common interests, and to punish crime; this duty must not be left in private hands.

I quote the following from the Encyclopedia of the Laws of England, *s.v.* Escape: "Considerable controversy has from time to time arisen on the question whether the officers of the law or persons entitled to apprehend or detain a person accused or suspected of crime are entitled to kill him on pursuit if they cannot otherwise stop him, or to kill him to prevent his escape after arrest. It seems to be agreed that the custodian is not entitled to kill to prevent escape from custody on a civil charge, nor from custody on a charge of misdemeanor. Where the escaped prisoner is accused of a capital offence, the custodian appears to be entitled to kill him if he cannot otherwise retake him; but it is not clear whether the mitigation of the severity of the law as to punishments for felony during this century (the nineteenth) can be regarded as reducing the right of the officers of the law to kill a fugitive from justice. With respect to convicts under sentence of penal servitude escaping from prison, questions arose in 1896 owing to the shooting of an escaping convict on Dartmoor, which cannot be regarded as settled, and which have led to a revision of the Convict Prison Rules."

CHAPTER III

ON JUSTIFIABLE HOMICIDE

1. In defence of my own life from unjust attack I may use whatever violence is necessary and even go to the length of killing the aggressor, if I cannot otherwise save my life. This right of self-defence all laws, human and divine, concede, as Innocent III declared. Nature herself teaches us that an act which is necessary for self-defence is lawful, and even if it lead to the taking of the life of the unjust aggressor it does not cease to be lawful. A higher value must be set on the life of the innocent than on that of the guilty, especially when the guilty one is the cause of his life being put in jeopardy. No one is justified in using greater violence than is necessary for the purpose of self-defence, so that if by striking or wounding an assailant of my life, I can effectually defend myself, I am not justified in killing him. On the same principle no private person can take vengeance for violence which has already been done, by offering violence in return; vindictive justice is reserved for public authority, at any rate in more serious matters. Nor may one whose life is threatened anticipate the attack; defence is only lawful when the attack is practically being made, or is at any rate imminent. Unless the attack is practically imminent it is always possible to resort to other means than homicide for the defence of one's own life; one may invoke the protection of the law, or at least fly the intending assailant.

2. Under the same limitations it is lawful to kill the assailant not only of one's life, but also of limb, of chastity, and of property. For all these goods belonging to an innocent person may be lawfully defended by him even at the cost of the life of the unjust assailant of them, who is responsible for his own death by his unwarrantable action. When it is said that we may kill an unjust assailant in defence of property, it is supposed that the property which is threatened is of considerable amount. Innocent XI condemned a proposition which asserted that, "As a rule I may kill a thief for the preservation of a gold piece." This proposition is false, for a rich man would not be justified in shooting a thief whom he saw walking off with one of his silver spoons. If, however, the thief threatens property of considerable value, say, twenty pounds or so, and the only way of saving the money is by taking the life of the thief, this would be lawful. Moreover, when a highwayman demands my purse or my life, I am not bound to hand him my purse, even though it contain little money; I may always defend myself from such unjust attacks, even though it finally involves the death of the aggressor.

3. It is not lawful to kill another who attacks my honor with insulting words. The contrary used to be held by some theologians, but the doctrine was condemned by Alexander VII and Innocent XI. The reason of the difference between this case and the foregoing is that verbal insults are often not of very serious consequence; they are better and more effectively met by quiet contempt, than by being taken seriously, and that would be a perilous doctrine which taught that a man might avenge an insult with the death of the offender. What constitutes an in-

sult is often a very subjective question, and the results of the doctrine would be deplorable.

4. What one may lawfully do, that, as a rule, another may help him to do; and so I may kill or maim an unjust assailant not only of my own life, limb, chastity, or property, but when any innocent person is similarly threatened I may also do the same in his defence. Although I may lawfully do this, yet there is seldom an obligation of doing it, for the obligation would only arise from charity, and as we saw above, this virtue does not usually bind with such serious inconvenience as would always be involved in taking life in defence of another. Those who have charge of the public peace and security are more strictly bound to perform their duty of protecting life and property even at the sacrifice of the lives of wrong-doers.

CHAPTER IV

ON KILLING THE INNOCENT

1. It is never lawful directly to kill the innocent, or, in other words, it is never lawful to kill the innocent when the death is intended in itself, or when it is inflicted as a means to the attaining of some other object. Such an act is expressly forbidden by God: "The innocent and just person thou shalt not put to death." [1] Reason, too, teaches us the same truth; for if ever it were lawful directly to kill the innocent, it would be so when such a death would be of great advantage to the commonwealth. But even to save the State an innocent man's life must not be taken directly, for the State exists that good men may lead honorable and peaceful lives; the State is for the good citizens, not the good citizens for the State. Not even the good of the State, then, makes it right to take an innocent man's life, and if that does not justify the act nothing does.

2. The death of the innocent may be permitted, not intended, when it follows from some action lawful in itself which also produces an equally immediate and good effect, and when this counterbalances the evil effect. This again is but the application of the principle of a double effect, and it is evident from what has been said before. The general of an army who orders the bombardment of a beleaguered town knows that his order cannot be executed

[1] Ex. xxiii. 7.

without killing perhaps many innocent non-combatants, yet the action is not unlawful.

3. Casual homicide which was not intended in itself, but which was the consequence of doing some dangerous action, as furious driving in a frequented street, is imputable to the agent, if he adverted to the probable danger of killing some one. If such probable danger did not exist, or was not adverted to, casual homicide will not be imputable in conscience, although if the action be forbidden by law, even on other grounds than the chance of its causing another's death, and some one is killed by it, English law punishes it as manslaughter.

4. It is usual to treat here of abortion, and of certain surgical operations concerned with childbearing. Abortion is the premature ejection of the living fetus. The human fetus reaches maturity about nine months after conception, but it is capable of living even if born a considerable time before maturity. A child may live when born at seven months or even somewhat earlier, especially if artificial means are taken for preserving its life. When the fetus is ejected at such a time that in the judgment of a skilled medical man it will probably live, this is called acceleration of birth rather than abortion in the strict sense. We are here concerned with the lawfulness of procuring abortion and of performing such operations as craniotomy and embryotomy, which destroy the life of the fetus. There is only question of the living, not of the dead, fetus, as is obvious.

5. Inasmuch as it is never lawful directly to kill the innocent, it is never lawful directly to procure abortion at a time when there is no probability that the fetus can live outside the mother's womb. This is clear, for the fetus is

a human being, with a human soul, which, as is commonly held by theologians, is infused into it by God at the moment of conception; it has, then, as much right to live as any one else, and it certainly is innocent of all personal crime. To deprive it directly of the medium in which alone it can live, is to kill it directly, just as to deprive a man of air by plunging him under water is to kill him directly. The direct procuring of abortion, then, is never allowed, inasmuch as it is the direct killing of the innocent, and intrinsically wrong. In the same way, anticipated homicide and a grievous sin is committed whenever means of whatever sort are taken to prevent conception.

6. However, just as the indirect killing of the innocent is lawful for a just cause, as we have seen, so a pregnant woman who is suffering from disease, or tumor, or any complication which threatens life, may lawfully adopt the necessary means to save herself, even if what is a remedy for her causes the death of the fetus. In all these cases we have but the application of the principle of a double effect; the mother is not bound to sacrifice her life by abstaining from adopting the remedy indicated, especially as her own death would also involve the death of the child. Thus we may approve of the following solution by Dr. Capellman of the "case where the uterus with the fetus is locked in the upper strait, as may happen through retroversion, sinking, and prolapsus of the pregnant womb. If all other known means of turning or replacing the uterus fail, I believe it to be allowable to induce abortion indirectly, by procuring the discharge of the waters, or by the perforation of the fetal membranes." [1] On the same principle P. Antonelli thinks that it is lawful to remove an ulcerated

[1] Pastoral Medicine, p. 16.

womb which is threatening the life of a pregnant mother, though the operation cause the death of the fetus, as also to remove an extrauterine fetus whose further growth would cause the certain death of the mother.[1]

All who unlawfully procure abortion incur the penalty of excommunication, the absolution of which is reserved to the Bishop by the Constitution *Apostolicæ Sedis* of Pius IX.

7. Craniotomy, or any other similar operation which has for its immediate and direct effect the destruction of the life of the fetus, is a direct killing of the innocent, and is never allowed. If the child is already dead there is of course no difficulty in permitting craniotomy or embryotomy, but if it is still alive it is not lawful to kill it, even if otherwise both child and mother were certain to die. Evil must not be done that good may come of it. The end does not justify the means. Some medical men consider the fetus, until it is born, as a portion of the mother which may be destroyed to save her life. This view is not in keeping with Christian principles, according to which the child has a soul of its own, and has its own independent right to live.

Some theologians used to think that such operations were lawful if the mother's life could not otherwise be saved, because the child might be considered a materially unjust assailant of its mother's life, and so be lawfully killed; or because when there is a conflict of rights the stronger right should prevail. However, in no sense can it be allowed that the child is an unjust assailant of its mother's life; it is where nature placed it, through no fault of its own, and it has a right to be there, and to be born. If either is an unjust assailant of the other's life, it is the mother,

[1] Medicina pastoralis, p. 220.

who voluntarily undertook the obligations of motherhood. In the same way, when the stronger of two conflicting rights prevails, this is due to the fault of the other party, and such fault is out of the question in this case. This doctrine is now theologically certain after the repeated declarations of the Holy See that no operation which tends directly to the destruction of the life of the fetus is lawful.

When the child cannot be born in the natural way, and the life of both mother and child is in danger, Cesarian section or some similar operation may be, and should be, performed, by which the lives of both may very probably be saved. The operation which takes its name from Dr. Porro, and which consists in removing the uterus together with the fetus, requires some special reason to make it lawful, for such mutilation of the mother is only allowed when it is necessary in order to save life.

In all operations which involve danger to the life of the child, Catholic parents should be careful to have the living fetus baptized, which may be done by the doctor or nurse while it is still in the womb.

CHAPTER V

ON DUELING

1. A DUEL is defined to be a premeditated and prearranged combat between two persons with deadly weapons, and usually in the presence of at least two witnesses, called seconds, for the purpose of deciding a quarrel, avenging an insult, or clearing the honor of one of the combatants, or of some third party whose cause he champions.

A duel, then, is a premeditated and prearranged single combat, for if two persons begin to quarrel and then come to blows, it is not a duel even if death be the result. Nor is it a duel if two enemies meet by accident and begin straightway to fight. A duel is a combat with deadly weapons, so that a fight with sticks or with the fists is not a duel. Although seconds are commonly present, yet their absence would not prevent a single combat from being a duel if the other conditions were verified. The duel is for the purpose of deciding a private quarrel, and for such a purpose it is unlawful even if it have the sanction of public authority, for there are other and lawful means of settling such matters. A single combat between champions of hostile nations entered into by public authority for the purpose of terminating the war, or giving courage to the army, would not be a duel, and might be permitted.

2. It is never lawful to fight a duel by private authority, for it obviously exposes the parties to grave risk of killing,

or wounding, or of being killed or wounded, and this is never lawful by private authority except under the conditions which justify killing in self-defence, and these are not verified in the duel.

The Council of Trent[1] very emphatically condemned dueling as a detestable practice and excommunicated the guilty parties, their seconds, and abettors, as well as emperors, kings, and princes, who permit it in their territories. This excommunication is renewed in the Constitution *Apostolicæ Sedis* of Pius IX, and the power of granting absolution if it has been incurred is reserved to the Pope. Benedict XIV, by a constitution dated November 10, 1752, condemned the following propositions as false, scandalous, and pernicious:

"*a.* A military man who, unless he offer or accept a duel, would be considered cowardly, timid, worthless, and unfit for office in the army, and so would be deprived of his post by which he gains support for himself and his family, or would forever lose all hope of promotion otherwise due to him, would incur neither fault nor penalty if he offered or accepted a duel.

"*b.* Those who accept or challenge to a duel for the sake of defending honor or avoiding disgrace, may be excused when they know for certain that the combat will not come off, inasmuch as it will be prevented by others.

"*c.* A general or officer in the army who accepts a duel through serious fear of losing reputation or office, does not incur the penalties inflicted by the Church on those who fight a duel."

The contradictory of these false propositions must be held by all who admit the authority of the Church.

[1] Sess. 25, c. 19, de Ref.

3. Clement VIII, in a constitution dated September 1, 1592, declared that those incurred the penalties of dueling who fought under the stipulation that they would stop after a certain number of blows, or as soon as either was wounded, or blood was drawn. Grave sin then would be committed by challenging or accepting a duel even under these conditions, at least on account of the scandal and disobedience to authority, if not on account of the danger.

By English and American law dueling is illegal, and if death be the result, it is regarded as murder, and the seconds are liable to punishment as accessories.

CHAPTER VI

ON WAR

1. War, or an armed struggle between sovereign states, is defensive when it is undertaken to resist attack; otherwise it is offensive when undertaken to avenge an injury, or in vindication of a right.

2. When a quarrel has arisen between two sovereign states if it is clear that one of the parties is in the wrong, it is bound to make reparation to the offended party. In national quarrels, however, this is seldom the case; as a rule, international disputes are matters of great complexity, and it is very difficult to say on which side right and justice lie. In ordinary cases, then, defensive war is always lawful, for if individuals have the right of self-defence the same right must *a fortiori* be conceded to a sovereign state. Even offensive war is lawful, provided that certain conditions be fulfilled. This is the certain teaching of Catholic theology, although the Church constantly prays to be delivered from all wars and from the terrible evils to which they give rise. Although war is a great evil, yet it is sometimes a hard necessity if still greater evils are to be avoided. For there is no higher tribunal to which sovereign states can have recourse to settle their disputed rights, and nothing is left but the final arbitrament of the sword. In modern times arbitration courts have been established and they have done useful work, but cases arise in which their aid cannot be invoked with effect.

3. The conditions on which war may be lawfully waged are three:

a. The public authority of a sovereign state is requisite to declare war, for war, except in just defence, cannot be made on private authority, or by a less than sovereign state; for private persons and subject states can always have recourse to higher authority for the vindication of their rights.

b. A just and weighty cause is necessary, for the cause should be such as to outweigh the grave evils and risks which always accompany war. Such causes in the judgment of divines are: the retaking of a conquered country or rebellious province, the avenging of a grave insult or injury offered to the State, the freeing of the unjustly oppressed, the refusal of infidel states to allow the Gospel to be preached in their dominions. There is considerable difference of opinion as to whether certainty of the existence of a sufficient cause is required or not for the lawfulness of a war. Some divines hold that a probability of right is sufficient, for with such a probable right a private person may commence an action at law, and states should not be in a worse position than private persons in the prosecution of their claims. However, on account of the grave public evils connected with war, and because it is unlawful to deprive another of what he possesses on the ground that it is only probably mine, it would seem that at least a more probable right or even a moral certainty of right is required on the side of the state that begins the war.

c. There must be an upright intention of advancing the cause of good or preventing evil. Mere delight in the excitement of war, or the desire of showing one's prowess, or obtaining promotion, would not justify war.

When the end of the war has been sufficiently obtained the victorious party should be ready to make peace on proper guarantees being given.

4. Where conscription exists or soldiers have already enlisted before the outbreak of war, they are not bound to make inquiries about the origin of the war in order to satisfy their consciences of its justice; they may presume that their country is in the right unless it is evident that it is in the wrong, and in doubt they are bound to obey the commands of their lawful superiors. If the war is clearly unjust it only remains for the conscientious soldier to abstain from inflicting unjust damage on the enemy, otherwise he will be a cooperator in injustice. Volunteers who had not enlisted at the outbreak of war are bound to satisfy their consciences as to its lawfulness before they take any part in it, just as they are bound to form a morally certain conscience about the lawfulness of any action that they undertake, as we saw in the Book on Conscience.

5. In a just war all means that conduce to the end of gaining victory over the enemy are lawful, provided that they are not against the law of nature, and international law or agreement. International agreements are only binding if they are faithfully adhered to by the adverse party. In modern war it is the practice to spare the persons and property of non-belligerents as far as possible. In naval warfare not only the enemy's ships of war may be attacked and taken, but his merchantmen, and any British vessel or vessel of an ally trading with or acting in the service of the enemy at war with England, or any neutral vessel engaged in the same way or in the carriage of contraband, and blockade runners, may be captured and made lawful prize by duly commissioned British ships.

[illegible] it is not allowed to appropriate private [illegible]

Part VI

THE SIXTH AND NINTH COMMANDMENTS

It is usual to treat of these two Commandments together, for the Sixth, "Thou shalt not commit adultery," [1] in expressly forbidding the chief sin, implicitly forbids all other external sins against the laws of marriage, and the Ninth, "Thou shalt not covet thy neighbor's house, neither shalt thou desire his wife," [2] forbids internal sins of covetousness and lust. The general doctrine concerning internal sins was given in a former Book; the special doctrine about covetousness in so far as it is against justice is clear from what was said about avarice and what will be said later about justice; the doctrine about internal sins of lust will be evident from what has to be said in this place.

[1] Ex. xx. 14. [2] Ex. xx. 17.

CHAPTER I

THE NATURE OF IMPURITY

1. THE means devised by God for the preservation and increase of the human race is the union of the sexes. This union has for its primary object the procreation of children, who require for their proper education the long and assiduous care of both father and mother. Nature, then, as well as the law of God and of the Church, requires that children should only be begotten of parents joined in lawful and indissoluble wedlock. As nature has taken care that the individual should take the food and drink necessary for his personal support by giving him the spur of appetite for nourishment and pleasure in taking it, so the same great Mother has taken care of the race by joining venereal pleasure to the act of procreating children. This venereal pleasure is lawful when indulged in between married people, and according to the laws of marriage. In all other cases it is unlawful, and is forbidden by the Sixth and Ninth Commandments.

Venereal pleasure must be distinguished from sensual and from venereo-sensual pleasure. Venereal pleasure has its seat in the genital organs, and is caused by their motions, the irregular motions of the flesh. Sensual pleasure is other than venereal and arises from indulgence of the senses, from the contemplation of a beautiful picture,

from listening to sweet music, from touching the glossy and soft coat of a cat. This sensual pleasure is morally harmless in itself, but there is a certain kind of pleasure which is sensual in its origin but which is connected with, and ordinarily causes, venereal pleasure. It arises from such acts as voluptuous kissing, and is called by divines venereo-sensual. On account of its connection and tendency, venereo-sensual pleasure is evil, and ordinarily is more or less sinful as we shall see in what follows.

Sins of impurity are consummated or non-consummated. Peccata consummata procedunt usque ad perfectam voluptatem veneream, quæ habetur per copulam vel per pollutionem. Sunt consummata juxta naturam si exinde generatio prolis sequi possit, aliter sunt consummata contra naturam. Non-consummata peccata sunt aspectus, tactus, colloquium impudicum, quæ non pertingunt usque ad perfectam voluptatem veneream.

2. All sins of impurity of whatever kind or species are of themselves mortal. This doctrine is taught in such passages of Holy Scripture as the following; 1 Cor. vi. 9–10; Gal. v. 19; Matt. v. 28. Moreover, as we saw above, those sins are grievous which cause great harm to society or to the individual; but there is scarcely any cause so prolific of public and private evil of all sorts as sins of impurity, so that we must conclude that they are grievous even by the light of reason. Furthermore, all sins of impurity if voluntary in themselves and fully deliberate are mortal; or in other words, it is grievously sinful directly to seek any even slight unlawful venereal pleasure, or to consent to it deliberately even when it has not been directly sought.

This doctrine is the approved teaching of theologians

and it has a rational basis, inasmuch as the tendency of men to these sins is so strong and their weakness so great, that slight indulgence in venereal pleasure almost necessarily leads to grave excesses, so that even in light matter there is the whole reason of the prohibition, and so all sins of impurity if fully deliberate and voluntary in themselves are mortal, and there are none that are venial merely on account of parvity of matter.

On the other hand, if venereal pleasure is not voluntary in itself but only in its cause, nor deliberately consented to when it arises, although it was foreseen that it would follow from some other action, as from reading a lascivious book, or looking at an immodest object out of curiosity, it may be only venially or it may be mortally sinful, according to circumstances. In general, if in the case in question there is proximate danger of giving consent to the impure pleasure, or if its cause is of its nature such as to occasion great venereal pleasure, this will be mortally sinful even when only indirectly voluntary; in other cases it will be only venially sinful.[1] This same principle will guide us in questions concerning the greater or less malice of venereo-sensual pleasure.

[1] Cf. Book I, p. 27.

CHAPTER II

ON CONSUMMATED SINS OF IMPURITY

THESE are commonly reckoned as six in number: fornication, adultery, incest, criminal assault, rape, and sacrilege. All are grave sins against chastity, and the last five contain grave malice against other virtues as well. Something must be said about each one.

1. Fornication is the act of carnal intercourse between persons of different sex who are not married but who are free to marry.

Holy Scripture teaches us that fornication is a grave sin, for "fornicators shall not possess the kingdom of God."[1] "No fornicator hath inheritance in the kingdom of Christ and of God."[2] It is a grave sin not merely because it is forbidden by positive law, but because it is intrinsically wrong and contrary to the law of nature. Innocent XI condemned the following proposition: "It seems so clear that fornication in itself is not wrong, and is only evil because it is forbidden, that the contrary is altogether against reason."[3] This truth is sufficiently clear to unaided reason, for the human offspring requires for long years the constant care not only of the mother, but of the father as well, and so nature requires that the father should be certain, otherwise so great a burden could not be laid upon him. But the fact of paternity would be very uncertain if fornication were allowed, and so we must conclude that

[1] 1 Cor. vi. 9; cp. Gal. v. 19. [2] Eph. v. 5.
[3] Prop. 48 condemned by Innocent XI, March 2, 1679.

it is wrong in the nature of things. As St. Thomas observes,[1] the fact that in particular cases the paternity of a child born out of wedlock is sufficiently clear, and the child's education can be provided for, does not militate against the force of the general argument, for in striving to lay down general rules of conduct we must have regard to what would happen ordinarily if such an action were lawful, not to what takes place in special circumstances.

2. Adultery is the act of carnal intercourse between persons of different sex of whom one at least is married to some one else. Besides being a grave sin against chastity, adultery is also a serious violation of justice, which prescribes fidelity to the marriage vows as long as they exist. Even if the other party whose marriage rights are violated by adultery should have given his consent to the sin, it still is against justice, for, like the right to life, marriage rights are inalienable, and cannot be renounced by those who own them. If both parties who sin together are married to some one else, there will be a double sin against justice committed by both of them, and the circumstance should be mentioned in order to secure the integrity of confession. This is clear, and it is confirmed by the condemnation of Proposition 50 by Innocent XI.

3. Incest is carnal intercourse with relatives by blood or by marriage. Besides its general malice against chastity, incest is against the special virtue of piety, which prescribes due reverence toward, and abstention from carnal sins with, those who are nearly related. With regard to parents and children at least, this law of reverence belongs to the law of nature; in other degrees of kindred and affinity up to the fourth, reckoned according to the rules of canon

[1] Summa, 2–2, q. 154, a. 2.

law, it is of positive ecclesiastical law; whether it is also of natural law in the nearer degrees is disputed. All carnal intercourse then between relatives up to the fourth degree is incest either by natural or by ecclesiastical law. Community of blood and the close ties which exist between parent and child give a special and distinct malice to sins of impurity committed between them; in other degrees of kindred and affinity there is not the same community of blood nor equally close ties, and so the opinion of many approved theologians is probable that although incest in the first degree of the direct line of blood relationship is distinct in malice from the others, these latter are all of one moral species as far as the integrity of confession is concerned.

Carnal sins committed between those who are united by the ties of spiritual or legal relationship are also distinct species of incest.

4. Criminal assault is the using of violence against a woman to compel her to commit sins of impurity. It contains a grave and special sin against justice as well as the malice of impurity, and it is severely punished by criminal law. It is probable that there is no specific difference in the sin whether the woman be a virgin or not.

5. Rape is the violent abduction of a person from a place of safety for the purpose of satisfying lust. The violence may be offered to the person abducted, or to the parents, or to those who have charge of her, and it adds a special malice of its own to the sin besides the malice against chastity.

6. By sacrilege is here understood the violation by carnal sin of a person, place, or object, consecrated to God. The doctrine concerning it will be sufficiently clear from what was said above under the First Commandment.

CHAPTER III

DE PECCATIS CONSUMMATIS CONTRA NATURAM

Hæc tria numerantur: pollutio seu mollities, sodomia, et bestialitas, de quibus in sequentibus articulis est agendum.

ARTICULUS I

De Pollutione

1. Pollutio est voluntaria seminis humani extra concubitum effusio, unde vocatur etiam peccatum solitarium.

Dicitur *voluntaria* sive in se sive in causa, ut distinguatur ab involuntaria quæ ex variis causis oriri potest et præsertim naturaliter ad superfluitatem exonerandam in somno.

Dicitur *seminis effusio* ut distinguatur a *distillatione* qua humor minus densus alterius omnino speciei ex urethra profluit apud puberes et impuberes sive cum excitatione venerea sive sine illa.

2. Pollutio directe voluntaria est intrinsece mala et peccatum mortale. Constat ex Sacra Scriptura[1] ac ex constanti Ecclesiæ doctrina. Innocentius XI hanc propositionem condemnavit: "Mollities jure naturæ prohibita non est. Unde si Deus eam non interdixisset, sæpe esset bona et aliquando obligatoria sub mortali." Idem probatur ex pessimis effectibus qui ex hoc vitio sequuntur tum individuo, ejus vires mentis et corporis debilitando, tum societati quatenus illi qui hoc vitio implicantur contenti

[1] 1 Cor. vi. 10.

voluptate solitaria matrimonii gravia onera fugerent cum ruina generis humani. In omni vero casu illicita est ita ut nulla exceptio detur, quia propter maximam proclivitatem hominum ad hujusmodi peccatum si unquam permitteretur facile occasiones sibi indulgendi fingerent ad propriam ruinam. Unde necesse est ut nunquam ne ad vitam quidem salvandam sit licita.

Plures antiqui Doctores probabiliter juxta St. Alphonsum[1] tradiderunt licere semen corruptum sine sensu libidinis expellere. Moderni autem negant semen unquam corrumpi, unde fundamentum istius sententiæ deesse videtur. Smegma vero congestum sub præputio removere licet et expedit ad pruritum minuendum.

3. Pollutio indirecte voluntaria est peccatum grave vel leve vel nullum juxta circumstantias. Si provenit ex causa graviter mala in genere luxuriæ est peccatum mortale, quia volendo talem causam vult homo implicite etiam pollutionem. Si provenit ex causa leviter mala in genere luxuriæ, ut ex curiosa lectione libri minus honesti, ipsa pollutio probabilius est tantum veniale, "quia cum pollutio non sit volita in se, sed tantum in causa, eo gradu mala erit, quo mala est ipsa causa."[2] Si prævidetur secutura per accidens ex honesta actione, ut ex equitatione, ex modo decumbendi rationabili causa assumpto, nullum erit peccatum. Si vero per accidens sequitur ex actione mala in alia specie quam luxuriæ, ut ex ebrietate, ex violatione jejunii, videtur esse veniale, cum aliqua admittatur culpa etiam contra castitatem quando pollutio prævidetur secutura ex actione ad quam ponendam nullum detur jus. Aliqui excusant ab omni etiam veniali culpa

[1] Theol. Mor. 3, n. 478.
[2] St. Alphonsus, Theol. Mor. 3, n. 484.

pollutionem quæ per accidens sequitur ex actione venialiter tantum mala in alia specie quam luxuriæ.[1] Ut patet in hac questione præscindimus a periculo consentiendi in delectationem ex pollutione ortam, quod non supposuimus.

Pollutio in somno quæ accidit ex prævio peccato mortali in genere luxuriæ, est ipsa peccatum mortale; si sequitur ex peccato veniali in genere luxuriæ vel ex peccato mortali ebrietatis, est ipsa veniale; aliter est nullum.

Siquis pollutionem dum patitur evigilatus fuerit, non datur obligatio positive eam reprimendi, dummodo nullus consensus detur: mens debet ad Deum vel ad alia converti ne consentiat in malum.

Dummodo adsit justa et proportionata causa exercendi actiones, ut a medicis qui mulieribus medentur, ex quibus prævidetur pollutio secutura quæ non intenditur nec cui consensus datur, hæc nullum erit peccatum, ut clarum est ex principio duplicis effectus.

4. Quamvis mulieres semen non administrent sed ovum semine fœcundandum in opere conjugali, similis tamen voluptatis completæ solitarie sunt capaces sicut sexus virilis. Unde sicut apud viros specie distinguuntur peccatum tactus impudici incompletum et pollutio, ita apud feminas peccatum solitarium consummatum a peccato nonconsummato specie distinguitur. Ita cum communi sententia videtur tenendum. Non semper tamen apud feminas quæ pollutionem patiuntur adest effusio extra vas, sed intus excretio manet. A pollutione vero, ut patet, sedulo sunt distinguenda menstrua, quæ post pubertatem adeptam usque ad menopausim fere omnes feminæ sine æstu libidinis singulis mensibus experiuntur.

5. Impuberes qui semen prolificum non habent volup-

[1] St. Alphonsus, Theol. Mor. 3, n. 484.

tatis perfectæ quæ peccatum consummatum comitatur sunt incapaces, unde saltem probabiliter peccatum pollutionis physice committere nequeunt. Voluntarie sibi complacendo motibus impudicis mortaliter quidem peccant impuberes, sed probabiliter propter dictam rationem est peccatum tantum tactus impudici.

6. Vidimus pollutionem, quæ ex causa leviter tantum mala in genere luxuriæ sequitur et quæ in se non est voluntaria, esse veniale tantum peccatum. Sed quæstio est apud Doctores controversa utrum si propter specialem alicujus dispositionem vel fragilitatem pollutio fere semper ex tali causa sequitur iste sub gravi ab actione ponenda teneatur eo quod causa tunc graviter in effectum influere censeatur, an tantum sub levi. Si adsit proximum periculum consensus dandi, omnes admittunt adesse obligationem ab actione ponenda abstinendi gravem, aliter vero probabilis videtur sententia plurium obligationem esse solummodo levem. Nam adhuc vera manet ratio a S. Alphonso assignata doctrinæ supra traditæ, "quia cum pollutio non sit volita in se, sed tantum in causa, eo gradu mala erit, quo mala est ipsa causa." Ratio vero cur causa in hoc casu gravius influere in effectum videtur, est subjectiva agentis dispositio quæ non est volita, nec proinde imputabilitatem effectus afficit.

ARTICULUS II

De Sodomia

Sodomia est actus venereus completus in vase indebito, et est peccatum gravissimum contra naturam. Concubitus cum eodem sexu et copula per anum est sodomia perfecta, concubitus diversorum sexuum et copula per

an .a imperfecta quæ specie a pr
Si ·vatur, nisi aliud expresse a
declaratur, intelligitur sodomia perfecta.

Plures tamen theologi docent sodomiam cc
concubitu ad indebitum sexum, ita ut sit indi
parte coeatur, si fiat applicatio membri virilis
indebitum cum pollutione. Quæ sententia
probabilis, imo ut aliqui dicunt communis, u
si confessarius intelligat fuisse concubitum c
ad sexum indebitum et cum pollutione, nec est n
inquirere de modo coeundi.[1]

Sodomia igitur consistit in concubitu cum sex
cum pollutione, unde siquis se polluit simplicite
alium, malitiæ ejus inconscium, sine affectu ad
et sine concubitu, habetur pollutio non sodomiæ
etiam peccat, circumstantia complicitatis in conf
manifestanda. Probabile est specie non distingu
agentis et patientis, si ex utraque parte adfuerit

ARTICULUS III

De Bestialitate

Bestialitas est concubitus cum bestia.

Dummodo adsit pollutio indifferens est sive
masculina sive feminina, qua specie sit, vel qua pa
cum malitia hujus peccati consistat in accessu ac
speciem, quacum generatio haberi non possit. C
peccatum quam etiam sodomia, cum in hoc pe
servetur eadem species. Constat vero hodie ger
non sequi ex commercio hominis cum bestia.

Sodomia et bestialitas gravissime lege etiam
puniuntur.

[1] St. Alphonsus, 3, n. 466.

CHAPTER IV

ON NON-CONSUMMATED ACTS OF IMPURITY

1. As we saw above, mortal sin is always committed whenever venereal pleasure is directly sought or deliberate consent is given to it, even though the venereal excitement be little and stop short of consummated sin. In other words, there is no parvity of matter, as theologians say, in sins of impurity when the venereal pleasure is voluntary in itself. It follows from this that non-consummated acts of impurity such as immodest touches, looks, talk, reading, will be mortally sinful whenever they are indulged in with a view to exciting venereal pleasure.

2. Even though the excitement of venereal pleasure be not directly intended, yet immodest touches will be more or less sinful in proportion as they are more likely to excite venereal pleasure, and there is no just cause for allowing them. If there is a just and proportionate cause for permitting immodest touches and any venereal pleasure that may ensue is not intended or consented to, then there is no sin in them. When there is no good reason for allowing immodest touches, they will be mortally sinful if, as a general rule in normally constituted persons, they tend to cause great venereal excitement; otherwise they will be venially sinful.

Hinc: (*a*) Tactus in partes inhonestas alterius personæ

diversi sexus sunt mortalia, imo alterius perso
sexus, nisi leviter ex joco vel petulantia fiant.

(*b*) Tangere genitalia brutorum, vel partes
estas alterius personæ per se veniale non excedit

In the same way immodest looks may be
venially sinful, or perfectly lawful, according
stances. When there is just cause for them a
is intended or consented to, they are lawful. I
good reason for them, and of their nature th
cause great venereal excitement, they are mor
otherwise they are only venially sinful.

Hinc: (*a*) Aspicere ex curiositate pudend
alterius sexus, vel concubitum humanum,
peccatum, nisi brevissime fiat, vel a longa di
si aspiciens sit senex, frigidus, talibus assuetus
parum moventur. Facilius a mortali excusa
curiositate aspicit picturas obscœnas, quæ no
movere solent.

(*b*) Leve peccatum per se non excedit
curiositate animalia coeuntia, partes minu
mulieris, partes obscœnas ejusdem sexus.

(*c*) Actus prædicti culpa vacant si ex pr
utilitate vel necessitate exerceantur.

Similarly immodest conversation will be mo
if it is about very obscene subjects between yo
especially if they be of different sexes. It will
sinful if the subject is less objectionable, or if
is made in passing. The confessor may, as a r
that grown up penitents, especially if they
who accuse themselves of immodest talk, are
of venial sin; and so he may spare himself an
questioning on the matter.

The reading of very obscene books without any good reason can hardly be excused from grave sin, unless by experience the reader knows that they have little or no effect upon him, and this should not be lightly presumed. Reading novels in which the passion of love is depicted in warm colors is very dangerous, especially for the young, and unless there is some good excuse for it can hardly be without some sin. This will all the more be true of novels which are suggestive of evil, and fill the mind with dangerous thoughts.

3. The morality of kissing and embracing is regulated by the same principles as the above. Kissing in the ordinary way of greeting or leave taking between relations and friends, according to the custom of the country, as theologians say, is of course harmless, and allowed. Even if such marks of pure affection or civility unintentionally sometimes cause venereal excitement, no notice should be taken of it. Apart from this, kissing and embracing, especially between different sexes, naturally tends to cause venereal excitement, and is more or less sinful. Mortal sin will be committed as a rule by indulging in passionate and prolonged embraces and kisses; otherwise the sin will be only venial. Those who intend marriage and are already engaged to each other have an excuse for showing each other the ordinary signs of affection, but they should use their privilege with due caution and Christian prudence. As a rule, little harm will be done if they have a witness of their conduct, or if they only permit themselves to do what they would do if such a witness were present.

4. Non-consummated sins of impurity are specifically distinct from consummated sins, in the same way as attempted homicide is specifically distinct from homicide.

Impure touches, however, and lascivious kisses ar
braces contract the malice of the circumstances of the
just as consummated sins do. For, just as fornicatic
one bound by a vow of chastity or with a relation
simple fornication, but contracts the malice of sacril
incest according to the circumstances, so impure t
of the same persons would also be sacrilegious or ince
The reason is because sins receive their specific malic
the object, and sins of touch take their malice fro
concrete object as it exists with its special circumstan

Impure speech and looks, on the contrary, do not se
contract the malice of the circumstances of the obje
such sins are affected by the general character of the
only, and not by its special circumstances. This at
is the opinion of many theologians.

It is a disputed point among divines whether ir
touches, looks, talk, or reading, are specifically di
from each other apart from any difference in the o
Would it, for example, be sufficient to say in confe
"I committed a sin by indulging in venereal pleasu
myself," without mentioning whether it was procure
touch, or look, or other means? Although the cor
opinion is that such a general form of self-accusation
not be sufficient, and that the penitent must say wh
the sin was one of touch, or look, etc., yet the con
view seems probable, for such imperfect acts are w
not precisely in themselves, but on account of their tenc
to excite venereal pleasure. The reason then and sou
their malice is the same, and so they would seem not
specifically distinct as sins, though they are physi
distinct acts.

Part VII

VENTH AND TENTH COMMANDMENTS

enth Commandment is, "Thou shalt not steal," [1] ore directly and explicitly it forbids theft, but it commands us to observe justice in our deal- others. The Tenth Commandment is, "Thou covet thy neighbor's goods," [2] and so it forbids ns against justice. The subject-matter then of nandments is the virtue of justice, of which we o treat.

[1] Ex. xx. 15. [2] Ex. xx. 17.

Division I

On Justice and Right

CHAPTER I

THE NATURE OF JUSTICE AND RIGHT

1. The word "justice" is used in a variety of senses, but here it is used in its strict meaning to designate the moral virtue which inclines its possessor to give to every one his due or his right.

The habit of giving to every one his due from principle because it is right and proper is obviously a virtue, and it is a moral, not a theological, virtue, for its immediate motive is not God, but the natural honesty and uprightness of so acting. Justice is a moral virtue which resides in and perfects the will, not the intellect, like prudence; it inclines the will to wish and to execute what is right. Justice inclines the just man to give his due to every one irrespective of who he may be. It does not consider the relation in which that other stands to God, or to one's self, as charity does; nor precisely what it is becoming in the just man to do, so that his actions may be worthy of himself, as does temperance, for example; it only considers what is owing to another, what is his due; and because it is the right thing that every one should have his own, justice inclines to give it to him.

What is due to another in justice and is therefore his strict right must be distinguished from what a man has a claim to on some other ground. A poor man who cannot support himself has a claim on our help, but out of charity, not out of justice. He is our brother; he is a child of our common Father in heaven; he is destined to be a fellow-citizen with us forever in the kingdom of heaven; the bond of mutual love which binds all such in one body, and makes them one big family, requires that all who can, should out of their abundance assist those who are in want. But this does not cause the abundance of one to belong to a needy neighbor in justice; it only prescribes that as much as is required to succor him in his necessity should be given him out of charity. A sufferer who is in pain has a claim on my sympathy and pity, not that it would be unjust to deny him my sympathy, but because pity and compassion require it of me. But when ten pounds are due to another in justice, those ten pounds belong to him; they are his property; he has a right exclusive of all others to all the benefit that can be derived from them, because they are his. Because they are his he can dispose of them as he pleases; he can put them in the bank, or spend them, or give them away; he would wrong no one even if he threw them into the sea. Any one who steals them, or to whom he lends them, must, if he would be just, restore them to the owner, because justice requires that all should have their own.

2. We may divide the species of justice into individual or commutative and social justice.

Commutative justice regards the relations between man and man in their private and individual capacity. It supposes a perfect distinction of rights between them, and

prescribes that these should be duly observed and respected. It exists between physical and moral persons alike, or between a physical and a moral person, provided that their rights are perfectly distinct from each other.

Social justice regulates the mutual relations between the individual and the society or State to which he belongs. As a member of society the individual has certain duties toward it; he must contribute his share to the common burdens; he must be ready to defend the common weal at the call of authority; he must obey just and equitable laws. This duty of rendering to the State what is its due is called *legal* justice. On the other hand the State has its obligations toward its subjects; it must distribute burdens, honors, and rewards equitably without showing favor to particular classes and persons; not indeed with absolute arithmetical equality all round, but according to respective merits. The virtue which should regulate the distribution of burdens and rewards among its subjects by the State is called *distributive* justice. To such as have committed crime and injured the common weal the State metes out condign punishment according as *vindictive* justice demands.

There is a difference of opinion among Catholic writers as to whether legal, distributive, and vindictive justice, which we have grouped together under the name of social justice, are really subordinate species of the virtue, or whether commutative justice is the only species that may in strictness be so called. Whatever view be taken we must allow that in commutative justice alone is there a perfect distinction between debtor and creditor; it alone observes arithmetical equality in satisfying its obligations; it alone binds to restitution after being violated. In social

justice, on the contrary, there is no perfect distinction between the State and its subjects; social justice does not prescribe the observance of arithmetical equality, nor does its violation bind to restitution, except when by the same act commutative justice has also been infringed.

3. That which in justice is due to me is my *right*, as it is called. I have a right to my life, to my good name, to my property; and any one who deprives me of these rights is guilty of injustice. Rights, then, are the subject-matter of justice, and in this, its strict sense, a right may be defined as a moral power of having, doing, or exacting something.

It is said to be a moral power, to distinguish it from the mere physical capacity of brute force, which confers no rights of itself. It is a moral power which may not without injustice be interfered with. It is the power of having and possessing as one's own something which man values and which serves his convenience and wants; or of doing something, of giving scope to his bodily or mental activity; or of exacting some service as due to him from another.

A right is *in re* or *ad rem*. A right *in re* is a right which one has to something determined and already his own. In order that one may have a right *in re* the object must already exist; it must not be merely possible or future; it must be determined and separate; it must belong to the person by a title of justice so that it is his. If one of these conditions is wanting but notwithstanding some one has a claim in justice that something should become his property, he has a right *ad rem* to it. Thus a farmer has a right *in re* to his harvest after he has gathered it; before it has grown he has only a right *ad rem*. The right of a servant to his wages is *ad rem* until they are paid; after they are paid his right is *in re*.

A right *in re* seems to be practically equivalent to ownership (*dominium*). Ownership is absolute or qualified. Absolute ownership is the unlimited power of disposing of a thing for one's own benefit. The absolute owner of a horse may use him, sell him, give him away, or kill him, without violating justice; he may do what he likes with his own. If ownership is limited in some way so that the owner has not a right to all the uses to which the object may be put, the ownership is qualified. Qualified ownership of the thing while its use belongs to some one else is called direct; qualified ownership of the use of what belongs to some one else is called indirect ownership.

According to English law a subject is incapable of absolute ownership of realty; he is only capable of a qualified ownership therein, although to all intents and purposes an estate in fee simple is equivalent to absolute ownership. A qualified property of many different kinds may be had in realty, and both an absolute and qualified property of many different sorts may be had in movables. The various kinds of property, especially in immovables, are recognized and determined by law, which enforces the rights and obligations annexed thereto. In different systems of law there will be different kinds of property recognized. It will be sufficient for our purpose merely to mention *ususfructus, usus, habitatio, servitus,* of the Roman and canon law.

In English law the quantity of interest which a man has in lands and tenements is called an estate, of which there is a great variety: equitable and legal estates; estates of inheritance and not of inheritance; estates of freehold interest and less than freehold, such as estates for years, estates at will, and estates at sufferance.

CHAPTER II

OBJECTS OF OWNERSHIP

1. We will here consider the various objects which can be owned by men, and to the exclusive use of which they can lay claim as being due to them in justice. We saw above that God has reserved to Himself the dominion of human life; He is the God of life and of death, so that an injury is done to God by suicide or by unjustifiable homicide. Not even the State can have the absolute ownership of human life; it can never directly kill the innocent, although, as far as the common good demands it, the State may take the life of malefactors, and may require that each and all should be ready to defend the common weal even at the risk of life itself. No one, then, but God has the absolute ownership of human life, or of man's limbs and members.

Each one, however, has a qualified ownership in the faculties which God has given him. His activities of mind and body have been granted to man that by using them in a proper way he may do good and avoid evil, and thus secure the end of human existence. A man, therefore, is under the obligation imposed by God of making use of his mental and bodily faculties, and he has a consequent right to do so, as far as thereby he does not injure others.

When man by his labor has produced something which serves his wants and convenience, he has a right to the fruit of his toil; this is his property, and he cannot be

deprived of it without injustice. This applies to what he has produced with his own toil, out of his own material, with his own resources.

A man's reputation then, inasmuch as it is the fruit of his merit and industry, is his property, and he cannot be unwarrantably deprived of it without injustice. He may, however, surrender it himself for good reason; he may write his confessions like St. Augustine for the purpose of self-humiliation and for the instruction and edification of others; otherwise he must have a care of his own good name, without which he can do little good, and may do great harm to others.

2. Similarly, by the law of nature a book, design, or composition, belongs to the author, and a new invention to the inventor. These things and others of the same kind are the fruit of the author's or inventor's thought and labor, and any one who stole them and published them without their owner's consent would commit a sin against justice.

Among modern civilized nations these rights are protected by municipal laws and international agreements, and, inasmuch as these determine the vague and uncertain prescriptions of the natural law, they bind in conscience.

The exclusive right of printing or otherwise multiplying copies of books, etc., is called in English law copyright. It extends not only to books, but to every volume, part, or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately printed; to engravings, prints, sculpture, models, busts, paintings, drawings, photographs, designs, dramatic and musical representations.

Copyright is protected throughout the British dominions

and the principal countries of Europe, which form the Copyright Union. On certain conditions copyright is now protected in the United States of America, and foreign authors may acquire copyright within the States by complying with those conditions.

English law grants copyright for the author's natural life and for seven years longer, and if this period is shorter than forty-two years after the first publication, it then grants it for the term of forty-two years.

In the United States the original term runs for twenty-eight years; it may, however, be renewed for a further term of fourteen years, making forty-two years in all.

In the same way patent right, or the right of the inventor to reap the benefit of a new contrivance, is protected in England on certain conditions for fourteen years, which protection may be extended for a further period of seven or fourteen years if the inventor has not yet reaped the full benefit of his invention, and such patent is for the public benefit. The period to which patent right extends in the United States is seventeen years.

There is a controversy among theologians as to whether the natural law of itself forbids the reissue by another without the author's consent of a book which has once been published. Some deny this on the ground that by being published, apart from the prescriptions of positive law, a book becomes public property, and any one who buys a copy may make what use of it he pleases. He is merely disposing of what is his own. The contrary opinion, however, seems better grounded, for the author in publishing a book makes over indeed to the buyers of it certain advantages, but there is nothing to prevent him reserving the right of issuing it again to himself. The

buyer of a copy may make the contents of the book his own and work them up again in any form of his own that he chooses; he buys the material part of the book, paper, binding, etc., and may make what use of them he pleases; but he does not purchase the right to issue the book again, and he violates justice if he does so against the author's wish. The same holds with regard to patent right.

This controversy is of little practical importance, for sufficient protection is provided in most civilized countries by positive law.

3. We saw above that no one except God can have an absolute property in man's life or members. No man then can become the chattel of another so that he may lawfully be disposed of like a brute beast. Christian teaching has banished such an idea from Christendom at least. On the other hand, there is no difficulty in admitting that one man may make over his services to another for as long as he pleases. Theoretically, therefore, there seems no reason for saying that slavery is against the law of nature. We here understand by the term the state of perpetual subjection of one to another so that he owes that other his life service in return for board, lodging, and clothes. Practically, great abuses usually accompanied slavery, and we must allow that it is out of harmony with the spirit of the Gospel. Chiefly through the wise and gradual action of the Church, it has ceased to exist as an institution among civilized nations. However, we must not forget that penal servitude is still the just and recognized punishment for grave crime. Merely looking at the question from the point of view of the strict law of nature, we must acknowledge that a state of slavery arising from

contract, or birth, or in punishment for crime, or as the result of a just war, is not in itself immoral.

4. Animals and the earth, together with all that they produce, may become man's absolute property. God has imposed on him the obligation of maintaining himself and those who are dependent upon him, and he has a consequent right to make his own whatever is necessary and useful for that purpose, if it has not been appropriated by some one else. He has a right to provide not only for his immediate wants, but for the future also; not only for himself, but for his offspring. In other words, nature herself gives man the right of private property. This right is not given by the State; it is anterior to the State, and its preservation and defence is one of the chief reasons for the existence of the State. It may indeed be regulated by the State, as far as is necessary for the common good, but it is beyond the power of the State to do away with it.[1] No Catholic is at liberty to deny the lawfulness of private property and its necessity in the general conditions of the modern world.

Socialists indeed advocate the nationalization of the land and of all the means of production and exchange as a sovereign cure for the economic evils of the world. The plan militates against the right of private property; it is unworkable, and even if it could be introduced it would be no cure for existing evils, and would introduce other new ones. The fuller treatment of this, a practical question in our days, scarcely belongs to moral theology; it is not in the confessional that such questions are treated. The student should consult books on ethics, or special works written on socialism or collectivism.

[1] Leo XIII, on the Condition of Labor, May 15, 1891.

CHAPTER III

WHO MAY OWN PROPERTY

SECTION I

General Principles

1. NONE but an intellectual being endowed with intellect and will can own property. For such alone, or persons as distinct from things, are the subjects of rights; persons alone can freely dispose of objects which are necessary or useful for the attainment of man's destiny. Persons alone can suffer a formal injury by the wilful violation of their rights against their will, and so they alone are capable of having rights and holding property.

2. God, who is the Creator of all things, is also their universal Lord and Master. He can do what He pleases with His own; however He may treat His creatures, they cannot complain of God's injustice toward them. He is bound only by the laws of His own infinite Goodness and Wisdom.

Other pure spirits whom God has created might conceivably have rights of ownership, but as they have no use for material things with which we are specially concerned, we need not further consider them in this connection.

3. All men, even imbeciles who will never have the use of reason, and infants still unborn, are subjects of rights and capable of holding property. For they all require many things for their support, preservation, and defence, for the perfect development of all their faculties, mental

and bodily, and for the orderly and secure attainment of their end. As, then, they are under the obligation of striving for the attainment of their end, and they have the right to do so, they have also the right to the necessary means. This reasoning is not invalidated by the incapacity of infants and imbeciles to use their faculties and administer their property. Their rational nature gives them their rights; their capacity to use them is not a necessary condition of their existence. A man who is asleep retains his rights, though he cannot then exercise them. Besides, whatever defect there might be in the title of infants and imbeciles to the rights of men is supplied by the provisions of positive law, which confers rights of property independently of the knowledge or acceptance of the owner.

4. Inasmuch as man is a social animal, and develops his faculties in the society of his fellows, whose help he constantly needs, nature herself has given him the right to form private societies, companies, or corporations, for the furtherance of common ends, independently of that larger public society which we call the State, and to which all belong. As Leo XIII teaches: "Private societies, then, although they exist within the State, and are severally part of the State, cannot nevertheless be absolutely and as such prohibited by the State. For to enter into a society of this kind is the natural right of man; and the State is bound to protect natural rights, not to destroy them; and if it forbid its citizens to form associations, it contradicts the very principle of its own existence; for both they and it exist in virtue of the like principle; namely, the natural tendency of man to dwell in society." [1]

[1] Encyclical on the Condition of Labor, May 15, 1891.

The State of course has the right of control over such societies as are founded for civil purposes, and they are subject to the just laws which the State may make in their regard. English law acknowledges both corporations aggregate, consisting of more than one person united for the purpose of pursuing a common end, and corporations sole, consisting of but one person like the sovereign, or the rector of a church. A corporation is a moral entity, a fictitious person, with rights of its own, distinct from the rights of the physical persons who compose it. As far as property is necessary for the attainment of its end, a corporation has the right of ownership, though this right is subject to the control and regulation of the supreme authority. Leo XIII in his encyclical on labor warmly approves of workmen forming their own unions and societies for the defence of their rights and the furtherance of their welfare.

Section II

Property Rights of Minors

1. Apart from positive law, a minor is capable of owning property in his own right just as if he were of full age. Considerable rights over a child's property were granted to the father by Roman law. The minor had indeed complete ownership of what he earned by military service or by any public office, but the usufruct of what came to the son in other ways belonged to the father. Similar rights are commonly granted to the father by those modern systems of law which are derived from the Roman. According to English law, however, the father as such has no rights over any property which belongs to his child. During the child's minority, if no trustee or guardian of

his property has been appointed, the father will usually be appointed guardian, and in that capacity he is bound to administer the property for the benefit of his child, nor may he use it for his own profit.

On the other hand, English law gives no rights to children to share in their father's property except in case of intestacy, differing in this also from the Roman and derived systems. The parent may by our law leave his property to whomsoever he will, unless of course it is entailed. If a father die intestate, one-third of his real estate, if he was possessed of any, goes to his wife as dower, unless it is barred as it is in the majority of cases; the rest goes to the eldest son or his issue, or if there were no son the rest is divided equally among the daughters. Of the personal estate of a father who died intestate one-third goes to the widow, and the other two-thirds to the children in equal shares.

2. A child who has the means is under a moral obligation of supporting his parent when he is incapable of supporting himself, and this obligation is enforced by English law.

NOTE. — There is no obligation by common law for the child to support his indigent parent, but in many of the States there are statutes which enforce this duty.[1] — END OF NOTE.

Moreover if a minor is earning wages the parent is not bound to support him free of cost, and until he is sixteen it would seem that the parent is justified in taking his earnings. Even after that age it may well be that an elder son or daughter who is in receipt of wages is bound to help to support younger brothers and sisters if the

[1] Schouler, n. 265.

family is numerous. Apart from these obligations a minor acquires a full right to what he earns, and may enter into a contract with his parents for the payment of the cost of his board and lodging, reserving what is over of his wages for himself. If a minor works in his father's house no contract for wages will be presumed; he is supposed to forego them, or his keep is supposed to be an equivalent, unless an express contract for wages is entered into between them.

NOTE. — "We may fairly assume," says Schouler (Domestic Relations, n. 252), referring to the United States, "that all other things being equal, the father is actually entitled to the value of his child's labor and services until the latter becomes of age." — END OF NOTE.

3. Minority ceases on the completion of the twenty-first year of the minor's age, or by emancipation. A minor is emancipated from his parents' control by marriage, by entering into religion, or when an adult child leaves the paternal household and enters the army, or ordinary service as a domestic servant or laborer.[1]

SECTION III

Property Rights of Married Women

1. The fact that a woman marries does not of itself take away or lessen her natural capacity to possess property. Her husband is indeed the head of the family, and is presumed to be better able to administer family affairs than his wife. Moreover, the law of England used to give the husband very extensive rights over his wife's property. For in general any freehold estate of which the wife was seized at the time of the marriage, or of which she became

[1] Eversley, Law of the Domestic Relations, p. 599.

seized afterwards, became vested in her husband and herself during the coverture, and the husband was entitled to the profits, and had the sole control and management. By marriage a husband became possessed of his wife's leaseholds in her right. He was not only entitled to the profits and management of them during the joint lives, but he could dispose of them as he pleased, by any act during the coverture. The personal chattels of the wife became in general the absolute property of the husband.[1]

By degrees inroads were made on the rigor of the common law, and means were found to secure separate property to a married woman. By the Married Women's Property Acts of 1870 and 1882 great changes were introduced, so that now a woman married after the first day of January, 1883, possesses as her separate estate all her property whether acquired before or after the marriage. All women who were married before the above date similarly possess as their separate estate all property which comes to them after that date. Practically, therefore, during her life and that of her husband a married woman has rights of property as if she were single.

Furthermore, she has a right to support for herself and her children, even those of a previous marriage, at her husband's expense according to her condition in life, and she may effect an insurance on her own or on her husband's life for her separate use.

NOTE. — The statutes of the different States of the Union agree in conceding to married women the separate right to all property, real or personal, acquired before or during her married life from any one else than her own

[1] Stephen's Commentaries, 2, p. 277.

husband, whether by gift, grant, devise, or bequest. In the majority of States, even the wife's earnings may be claimed as her own property. When the acquisition of property comes to her from the husband, not from a third party, some of the State legislatures have enacted that such property should be considered as her separate estate. — End of Note.

2. Besides the foregoing advantages a married woman who survives her husband is entitled to dower, unless some act has been done to curtail her right; that is, she is entitled to hold to herself, for the term of her natural life, the third part of all the lands and tenements of which he died seized in fee simple or fee tail, and of which any issue that she might have had could have been heir.[1]

Note. — By common law she was entitled to one-half of the goods and chattels of her husband, if he died without issue surviving; one-third, if he left children or descendants; but the statutes of the different States often deviate from this rule. See Woerner, American Law of Administration, Vol. 1, n. 67. There are few questions in which the various States of the Union indicate so many points of difference as in the determination of the rights of the widow of an intestate husband, whether her rights of dower or her rights as an heiress of her husband. — End of Note.

If her husband dies intestate and without issue the widow is entitled to the whole of her husband's estate, both real and personal, when such estate does not exceed five hundred pounds in value; if over that amount she takes five hundred pounds out of the real and personal estate ratably before any division is made, and after that

[1] Stephen's Commentaries, 2, p. 282.

the share in the remainder to which she was entitled before the passing of the Intestate's Estate Act, 1890.

Before the passing of this act a widow of a husband who died intestate took one-half of the personalty if there were no children of the marriage, otherwise she took one-third. Moreover, one-third of the intestate's real property went to the wife for life. These rights therefore she still possesses.

3. A married woman can now make a will and leave her separate property according to law to whom she pleases. In conscience she must of course take account of the needs of her surviving relatives and of other legitimate claims on her remembrance. If she dies intestate all her personalty goes to her husband; her realty also goes to him for life, afterwards to the only child, or to the eldest son or his issue if he be dead, or to the daughters equally.

NOTE. — When the wife dies intestate, there is a considerable difference in the laws of the State legislatures. It may be useful to give the following extract from Woerner's American Law of Administration, Vol. 1, n. 66. "Upon the death intestate of a married woman, the husband is entitled, at common law and affirmed by the Statute of Frauds, to all her personal property, whether she left surviving children or descendants or not; and so by the statutes of Delaware, Georgia, Kentucky, Oregon, and Pennsylvania. He is entitled to take as heir, if there is no child or descendant, nor brother or sister, nor father or mother, nor any next of kin, under the statutes of Alabama, Arkansas, Florida, Louisiana, Maine, Maryland, Massachusetts, Tennessee, Virginia, and West Virginia; together with children or descendants in California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas,

Mississippi, Nevada, New Hampshire, North Dakota, South Carolina, South Dakota, and Texas. In Missouri the whole estate descends to the husband if the wife leaves no children or descendants, father, mother, brother or sister, or descendants of such. If the wife die without leaving issue or descendants, the husband takes the whole estate in Georgia, Minnesota, Ohio, Vermont, and Wisconsin; one-half of the realty in Michigan; and one-half of all the estate in Missouri. In the absence of any statutory provision, he is entitled by the common law to his estate by the curtesy; in some of the States this is affirmatively announced by statute." Regarding the rights of children in case of intestacy the same author (n. 65) says: "In all of the States children inherit both real and personal estate in equal shares, the descendants of deceased children taking by representation, or stocks, that is, the children of a deceased child or descendant taking collectively such share as the deceased child or other descendant would have taken if alive at the time of the intestate's death." — END OF NOTE.

SECTION IV

The Right of the Church to Possess Property

1. We have already seen that not only physical persons but corporations or societies can also own property. The Church is a perfect, independent, and visible society founded by Christ our Lord, and endowed by Him with all the rights and privileges which are necessary to enable her to attain her end. This end is the sanctification and salvation of souls by the preaching, propagation, and exercise of the Christian religion. It is obvious that for the support of the Church's ministers and missionaries, for

the building and upkeep of churches, for the decent and proper exercise of religious worship, and for numerous other purposes, ample revenues and lands are required, and, inasmuch as the Church has the obligation and the right to work for the end for which she has been founded by God, so she has the right to the necessary means. This reasoning is confirmed by the condemnation by the Popes of several false propositions bearing on the Church's right of ownership.[1]

2. The general truth that the Church has a right to own movable and immovable property is certain, and does not depend for its validity on the question as to who is the definite owner of Church property. This is a disputed question, some theologians maintaining that God is the immediate as well as the ultimate owner, inasmuch as Church property is said to be given to God; others teach that the universal Church or the Pope is the owner; others again that the corporations constituted by individual churches, dioceses, religious congregations, and orders are the real owners of the ecclesiastical property belonging to those institutions. This last opinion is commonly accepted nowadays, and it seems more in keeping with the intention of the donors of such property, which is usually the benefit of a particular religious institution for the honor of God, and in this sense they make their offering to God.

The administration and management of Church property belong to those ecclesiastics who have been lawfully placed over the churches, dioceses, institutes, etc., to which the property belongs; and the Pope as the supreme head of the Church on earth has the supreme administration, or the *altum dominium*, as it is called.

[1] Props. 10, 32, 33, 36 of Wyclif; and Prop. 26 of the Syllabus.

3. The profits derived from ecclesiastical property should according to the Church's law and natural equity be devoted to those purposes for which the donors gave the property. If this cannot be done because the object for which the property was given no longer exists or for some other legitimate cause, it is for the Pope to make the needful dispositions so that the intention of the donors may be carried out as far as possible.

No immovable ecclesiastical property or even movable, when it is of considerable value, may be alienated without the leave of the Holy See, and the penalty of excommunication is incurred by all who attempt to do so, or to receive the same, without the requisite permission. The Pope for good cause may of course alienate Church property, as he has not infrequently done, especially in times of upheaval, as after the Reformation in England, and after the French Revolution.

NOTE. — The Bishops of the United States are empowered to alienate ecclesiastical property of their respective dioceses, when the value does not exceed five thousand dollars. If property of greater value is to be alienated, the question must be referred to the diocesan consultors and permission of the Holy See be obtained.[1] Each of the Bishops of this country received an indult from the Sovereign Pontiff for ten years to be computed from the date of promulgation of the Third Plenary Council (January 6, 1886). This indult empowered him to alienate diocesan property without the limit as to value just mentioned, provided that (1) he would not use this faculty until after a conference with his consultors; that (2) the utility or neces-

[1] Cf. n. 20, Third Plen. Coun. of Baltimore.

sity of such alienation would be apparent, and that (3) at the end of every three years he would report to the Propaganda the number of cases and the amounts involved in the transactions. See *Decretum de Alienatione Bonorum Ecclesiasticorum*, page ciii, in the volume of Decrees of the Plenary Council of Baltimore. It is probable that the excommunication incurred by those who violate the law prohibiting the alienation of ecclesiastical property without apostolic permission does not affect Bishops or abbots.[1] The reason given is that the censure is incurred by those who alienate or presume to receive ecclesiastical property *Ad formam Extrav. Ambitiosae.* But the Bishops and abbots did not incur excommunication under the Constitution *Ambitiosae* and therefore do not incur it under the Constitution *Apostolicae Sedis.* — END OF NOTE.

SECTION V

Property Rights of Clerics

1. We do not propose to treat here of the capacity of religious to own property; that question will be best considered when we treat of the state of religious. Here we only inquire into the property rights of the secular clergy.

The property of the clergy is divided by theologians into four kinds. What they possess as private persons, whether it has been given or bequeathed to them or they have inherited it, is called their patrimony. Quasi-patrimony is what they have obtained by the exercise of their ministry in stole fees, stipends, and casual offerings. Ecclesiastical goods are derived from the revenue of

[1] Cf. Ball. Palm. vol. vii, p. 271; Pennachi, Com. in Const. Apost. Sedis; D'Annibale, Com. in Const. Apost. Sedis, n. 168.

benefices. Savings are what a cleric has acquired by living sparingly and which he might have spent by living according to the ordinary standard.

Of these different kinds of property, patrimony and quasi-patrimony belong to the cleric; they are his private property, of which he has the ownership just like anybody else, for he is not deprived of the right to possess property by becoming a cleric. What he saves also from what he might have spent lawfully on his support belongs to him, for the laborer is worthy of his hire; he has a strict right to a decent living from the revenues of the Church, and what he saves from the sum required for this belongs to him as his own.

There is a difficulty concerning the profits derived from his benefice if the cleric has one. He may of course use the income derived from this source for his maintenance according to his rank, but supposing that a balance remains over, what must he do with that? Ecclesiastical law prescribes that he must employ it for pious purposes, and must not squander it, or enrich his relations with it. He is bound under pain of sin to give it to the support of religion, or to the poor, or for educational or other pious causes. If he does not do this, he certainly sins against obedience; but does he also sin against justice, and is he therefore bound to make restitution? This is a disputed question among divines. The more probable opinion is that he does not sin against justice and so is not bound to restitution; for the income derived from his benefice is his own property, and he may do what he pleases with his own, unless there be some law which restricts his free disposal of his property. In this case there is such a law, which must be observed, but which for all that does not

make an act which it prohibits unjust; it only makes it unlawful.

2. In England and Scotland there are few benefices, and those few are poorly endowed, so that the clergy have to be supported by the offerings of the faithful. As Leo XIII says in his Constitution *Romanos Pontifices*, May 8, 1881, the offerings of the faithful were not regarded as ecclesiastical property where religion and the clergy were sufficiently provided for from other sources. In Britain, however, the offerings of the faithful are almost the only means available for the maintenance of divine worship, the building and repair of churches and schools, the support of charitable institutions, and of the clergy. Hence it becomes a matter of importance to be able to decide what offerings belong to the clergy as their own property, and what constitute ecclesiastical property, and belong to the Church. Of the latter property the clergy are only the administrators, and they are bound to render an account of their administration to their superiors and to God. Rules for settling what offerings are private, and what ecclesiastical property were drawn up by the Second Provincial Synod of Westminster approved in the year 1856; and Pope Leo XIII sanctioned those rules and ordered them to be observed wherever his Constitution *Romanos Pontifices* should be in force. I here give Father Guy's version of the rules:

"1. Offerings of the faithful for the propagation and ornament of religion, for the support of the clergy, the relief of the poor and other pious uses, are considered as made to God and the Church, and the administrators or guardians of them, whether ecclesiastics or laymen, are to be deemed merely dispensers of them, under an obligation

of rendering an account to God of their stewardship. As here now it is required among the dispensers that a man be found faithful in those things which concern the rightful administration of Church property, it seems proper that in this synod we should treat this matter more fully, inasmuch as having been occupied with matters more important in the First Provincial Council, we deferred the consideration of this subject to a more convenient opportunity.

"2. Every effort must be made to determine, if there be any doubt, the intention and purpose of the donor or testator of each fund, and that the proceeds of it may be rigidly applied to the use prescribed by him.

"3. If this intention cannot be ascertained from any trustworthy document, rules or canons by which a safe judgment may be formed in such cases should be observed.

"4. Whenever a church or school or any other building intended for religious uses, is erected or provided, either wholly or in part, from money contributed by the faithful, or granted by any society administering the alms of pious Catholics, every edifice of this kind is to be considered as belonging for ever to the place where it stands.

"5. The same judgment must be passed on buildings erected by any benefactor, unless it is clearly proved that he made a declaration that in erecting such an edifice he did not intend it for the advantage of the faithful of that place, but that he wished to confer a benefit on some particular order. The rules laid down in this and the preceding number as to rights in foundations are in the case of Regulars to be applied to new foundations only.

"6. But the Bishop shall not be allowed on this account to take away a mission lawfully entrusted to any religious

order. These rules regard merely a case in which a religious body either cannot or will not retain the care of a mission; for example, if a superior remove it to some other place, or for any other reason it there cease to exist altogether, and not for a time only.

"7. If, however, any mission be founded altogether or for the most part by funds belonging to any religious body, which for good reasons may wish to leave entirely and go elsewhere, we recommend that a distinct agreement be made between the Bishop and the superiors of the order as to what has to be done; so that on the one hand just rights may not suffer, and on the other no scandal may arise nor grievous loss of souls ensue.

"8. Much less is it lawful for any cleric, or even for the Bishop himself, to alienate Church property, as is evident from almost numberless decrees of canon law. If, however, on account of reasons approved of by the canons, such an alienation become necessary, the priest can never act in this matter without the authority of the Bishop, nor the Bishop without the precautions required by canon law.

"9. In every mission where money is contributed by the faithful in the ways hereafter described it is to be accounted Church property, and not a donation to the priest. For from this money he must provide not only for his own decent support, but for the expense of religious worship, for the maintenance of the fabric, for payment of debts, where there are any, and for other wants. Wherefore, if any priest leave a mission during the course of the year, he has not a right to his proportion of the yearly income, until the amount justly due for expenses be deducted. In like manner, what he has provided for the

use of the church from the income of the church, for example, wax candles, wine for the most holy Sacrifice, sacred furniture, these he should leave behind him, without any compensation, unless he can clearly show that the supply is excessive.

"10. All are aware that there are now in operation different methods of raising money for the support of missions. The following in particular we do not disapprove of, till the charity of the faithful shall provide in a better way. They are: *a.* Letting of seats or places in the church to certain persons or families at a fixed rent, to be paid to the church. *b.* Church collections made at the Offertory. *c.* According to a custom prevailing generally in England, payment of a fixed sum according to the part of the church which they occupy, by those who do not rent seats, yet are not content to occupy what is called the free space. *d.* Sermons by some distinguished preacher of the word of God, after which the alms of the congregation, whose number is often swelled by a concourse of strangers, are collected for the general or particular use of the church, or for some special purpose. *e.* Collections which are either made from house to house, by persons appointed for the purpose, or by societies and confraternities lawfully appointed, or which are gathered from *tens* or *hundreds* as is done in the excellent society called the Society for the Propagation of the Faith, or contributions made by the more wealthy portion of the congregation at fixed times, or yearly.

"11. Although it is certainly much to be desired that many of these methods of maintaining the Church were done away with, yet experience has taught that it is as yet impossible altogether to dispense with them. Where-

fore, in those places where one or more of these methods prevail, they ought to be so kept on, that no innovations be introduced without the authority of the Bishop. Especially the free space should not be diminished nor narrowed without consulting him. But whatever money comes to the mission by these means, it should be considered as belonging not to the priest personally, but to the general wants of the mission. Therefore, whatever furniture, either sacred or domestic, he acquires from these sources, or whatever he expends in keeping in repair the church or other buildings in any way belonging to it, in this expenditure, he is not making provision for himself, but is providing for the mission from mission property.

"12. As soon therefore as any priest enters on a mission, an inventory of all property belonging to the mission should be placed in his hands, by the dean, or by some one deputed by the Bishop. The missionary is bound to keep the furniture and buildings in good repair, yea rather to improve them, that he may deliver to his successor as much at least as he received himself. Should he provide for the renewing of what is grown old and mean, or procure something new and more elegant to ornament the place, a distinction must be made as regards the sources from which the expense is defrayed. *a.* If the priest has procured these things from his own property, or from the gifts of friends well disposed towards him, or in fine, from that portion of the income of the Church which he might have expended on his own decent maintenance, they are to be considered as his own property, provided he has kept all that he received in good order. *b.* But if these things were procured out of the general revenues of the

church, or by gifts and collections from the congregation, or by money granted by the Bishop, or the administrators of the temporalities of the diocese, they are to be deemed entirely the property of the mission, nor is it lawful for the priest on any account to claim them.

"13. It is also to be generally understood according to a rule of canon law, that things adapted for ecclesiastical purposes given to a missionary, are, unless there is proof to the contrary, given to the mission; but things adapted for personal use are presumed to be given to the priest personally, as are also such church things as are given by a flock to a priest as tokens of gratitude or affection.

"14. Retributions for Masses are the property of the priest. In like manner, where it is the custom, which is a very ancient one in England, of making presents to each priest at Easter and Christmas, these gifts of right belong to them. But the priest should be on his guard lest he incur the suspicion of avarice, by receiving anything on account of his administering the sacrament of Penance.

"15. As to the application of money derived from stole fees, there is no uniform practice throughout the whole Church. For though the Church detests all filthy lucre in extorting or exacting money for the administration of the sacraments, yet the Council of Lateran, held under Innocent III in the year 1215, prescribed that the laudable customs in accordance with which offerings were made by the faithful to the ministers of the altar, on occasion of the administration of the sacraments, should be observed. The proceeds derived from this source should be ordinarily considered as belonging to the priests; though they are distributed in different ways, in different places. That distribution seems to be the best, which is most conducive to alleviate the burthens of the mission.

"16. Whilst therefore we forbid anything to be asked for and much more anything to be exacted before the celebration of baptism and matrimony, and even after the celebration as a right, we leave it to the prudence of Bishops to determine in their diocesan synods what seems best adapted to the customs and state of places. Especially should they most vigilantly correct all abuses, if any exist, as to the amount or to the exaction of these offerings, by enforcing everywhere an equitable arrangement."

CHAPTER IV

ON TITLE TO PROPERTY

TITLE is a cause sufficient to confer property in a thing. There are several kinds of title, some derived from the natural law, others due to positive law, and others which have their effect from the will of private persons. They may be reduced to title by occupation, by accession, by prescription, and by contract. On account of its importance and the abundance of material we will treat of contract in a separate Book; the other three titles must be considered here.

SECTION I

On Occupation

1. Occupation is the taking possession of some material thing with the intention of making it one's own. It will be a lawful title to ownership of property if the thing occupied had previously no owner, and actual possession is taken of it with the purpose of making it one's own. If these conditions be fulfilled it seems useless to investigate further how occupation is capable of conferring property. Whether the fact of occupation sanctioned by the community is sufficient, or whether we say that by occupation a man's labor is mingled with the thing, and thus the

connection of ownership is set up, is really immaterial. It is a title universally acknowledged and is derived from Nature herself.

As is clear from the definition, there cannot be occupation without actual or at least constructive taking possession of the thing, whether it be movable or immovable; it is not sufficient merely to see the thing at a distance, nor is it enough to take hold of it with the intention of seeing what it is, without any idea of retaining it for one's own.

Most things of value, especially the land, have owners already, and so a title to ownership by occupation can only arise with reference to certain classes of property which are not of very great importance. In moral theology this title is at the root of ownership derived from finding lost property, treasure-trove, and the capture of fish and wild animals. Here English law only partially agrees with what seems safe in conscience.

2. The finding of things of value without an owner confers ownership in the things found if they be taken possession of with the intention of making them one's own. Whether they ever had an owner or not is immaterial in conscience, provided that they have none at present. English law indeed grants property, which belonged to some one who died intestate and without heirs to the Crown, under the name of *bona vacantia*, and when such property is claimed by the Crown, its title of course prevails. If the Crown does not claim the property the first who should occupy it would seem to be safe in conscience if he kept it. The same doctrine may be applied to wreck found, which positive law requires to be delivered to the receiver of the district, and this officer, if no owner

appear within a year, sells the same and pays the proceeds into the exchequer.

3. Any money, coin, gold, silver, plate, or bullion, found hidden in the earth, or other private place, the owner thereof being unknown, is called treasure-trove. By English law it belongs to the Crown, but if the Crown does not claim it the finder would be justified in keeping it.

4. One who finds property that has recently been lost may be bound in charity to take possession of it and try to discover the owner, but there is no obligation to do so in justice. If, however, he take possession of it, he is bound in justice to take reasonable care of it, and to use ordinary diligence to discover the true owner. On the true owner being discovered the finder has a right to be compensated for any expenses he has been put to in consequence of keeping the property, but he must deliver it up to the owner. As English law does not grant prescription in movables, this doctrine will hold even though the owner be discovered after the lapse of years; if the property still remains intact or in its equivalent it belongs to the original owner and must be restored to him. The finder of lost property acquires thereby a qualified property in it which is valid against all save the true owner, and if the true owner cannot be discovered within a reasonable time the title of the finder becomes absolute, and he may use it as his own.

5. Animals are either domestic, tamed, or wild. The property in domestic animals such as dogs, sheep, kine, pigs, always remains with the owner, however much they may stray, as long as they are not so utterly lost that there is no hope of finding the owner. Such animals always belong to their original owner as long as he can

assert his ownership over them, in the same way as his household furniture belongs to him. Wild animals which enjoy their natural liberty and go where they please belong as a general rule to him who first captures or kills them. Such a one makes them his own by occupation, for before he took them they belonged to no one. English law has modified this general rule to some extent, for if a trespasser capture or kill a wild animal on another person's land, it belongs to the owner of the soil on which it has been started and killed; if a trespasser start an animal on one person's property and kill it on another's, it belongs to the owner of the former. These rules of positive law give the owner of the property at least the right to vindicate his claim, which cannot then be lawfully resisted by the trespasser.

Animals which have been tamed, such as pigeons, bees, young pheasants that have been hatched under hens, belong to their owner as long as they retain the habit of returning to his premises, but if they lose that habit and recover their natural liberty, they belong to the first who takes them, like wild animals. Animals which are enclosed like deer in a park, rabbits in a warren, or fish in a pond, belong to the owner of the enclosure, as long as he can exert his control over them. If they recover their natural liberty, they are *primi occupantis.*

A poacher may be guilty of sin by damaging the property of another by trespassing on it, and from the fact that he exposes himself to grave personal risk, or to the danger of violently resisting lawful authority if he is caught. By the mere fact of capturing wild animals he does not commit a sin against justice, unless he kills so many in a particular property that the right of killing game therein

is seriously lessened in value, and the owner in consequence suffers considerable loss, because, for example, he cannot let it at so high a price.

Section II

On Accession

1. Accession is the increase of property either by natural production or by the union of one thing with another. When this takes place, legal and moral questions arise as to the owner of the increase. There are two leading maxims which settle such questions, *Res fructificat domino*, and, *Accessorium sequitur principale*. The maxim, *Res fructificat domino*, seems to follow necessarily from the nature of property and ownership, for he who has the absolute ownership of something has a right to reap the benefit of all that it is, of all its activities, and of all that it produces. And so if the field is mine, I have a right to the grass, wood, or other commodity which it produces. If the tree is mine, I have a right to the fruit; if the mare is mine, I have a right to the foal; in the latter case the maxim, *Partus sequitur ventrem*, is also applied.

Jurists and theologians divide fruits into natural, industrial, mixed, and civil. Natural are such as grass, which grows without human labor and care; industrial are the product of industry, as a book or a new invention; mixed are partly natural, partly industrial, as a crop of wheat or potatoes; civil are such artificial fruits as rent from houses and land, interest from money lent. In all these cases the maxim may be applied, *Res fructificat domino*. In the case of mixed fruits, if the material belongs to the laborer the whole produce will belong to him; if the material,

the field for example, belongs to some one else, then the owner of the field and the laborer whose labor aided in the production of the crop have each their right to a portion of the produce. Whether the crop be divided, or a money equivalent be paid to one or the other, is immaterial.

With regard to improvements made on land or in houses, the general rule is that, *Quidquid solo inaedificatur, plantatur, seritur, solo cedit.* However, first of all by custom, and in modern times by statute, an outgoing tenant has a right to compensation for the improvements he has made on his holding, provided that certain conditions have been fulfilled.

2. When one thing is added to another, the general rule is that what is accessory becomes the property of the owner of what is principal. And so the owner of land has the property in gradual increments made to it by alluvion; an island formed in a river belongs to the owner of the bed. If a river suddenly changes its course, or the sea suddenly retires, the rule does not hold; the ownership remaining as before. If wood belonging to another has been used in a building, the property is transferred to the owner of the building, with the obligation of making compensation for the wood. Similarly a painting on another's canvas belongs to the painter, but he must pay for the canvas. When a new form has been introduced into the material, as by baking bread, making wine or oil, the product belongs to the workman, but compensation must be made for the material. The ownership is then said to be acquired by specification. When liquids or solids belonging to different owners have been mixed, they should be separated if possible, and each owner

will retain his separate property. If this is impossible the former owners still retain their right to a proportionate part of the whole or to its value.

Section III

On Prescription

1. As the term is used here in moral theology, prescription is a title by which the ownership of property is gained or lost through adverse possession during the time and in the manner laid down by law.

In English law the term prescription is only used with reference to incorporeal hereditaments, *i.e.*, rights and profits annexed to or issuing out of land. Of these the chief are: advowsons, tithes, commons, ways, watercourses, lights, offices, dignities, franchises, pensions, annuities, and rents. Land and movables cannot be claimed by prescription. However, the Statute of Limitation, 3 & 4 William IV. c. 27, and the Real Property Limitation Act, 1874, have the same practical effect as Prescription Acts, with regard to real property, and it will be convenient to consider them here as such.

The mere possession of property belonging to another even for a lifetime would not of itself transfer the ownership to the possessor. But as it is so much easier to prove possession than ownership, and because those who have been in peaceful possession of property for a long time should not be liable to be unwarrantably disturbed, and moreover in order that owners of property may look after their rights, the legislature has authority to confer a right to property in consideration of long and peaceable possession. This is what both ecclesiastical and civil

laws of prescription do, and these laws avail not only in the external forum but also in the forum of conscience.

2. In order that ownership of property may be transferred by prescription certain conditions are requisite either from the nature of the case or by positive law. Theologians usually reckon five such conditions, viz.: *a.* the property must be such as the law allows to be prescribed; *b.* there must be good faith in him who prescribes; *c.* consequently there must be some sort of title; *d.* there must be possession; *e.* for the time required by law.

a. As prescription depends for its validity on positive law, there can be no prescription which the law does not recognize. English law does not recognize any title to movables by prescription, as we have already seen. Ecclesiastical law acknowledges a right by prescription to both movables and immovables. Inasmuch as laymen cannot hold benefices they cannot gain a title to them by prescription, though clerics may do so.

b. Good faith is the second condition required for prescription. English law does not expressly require good faith, but it is certainly required in conscience. He who prescribes must not know that the property which is in his possession belongs to some one else; if he knows this, he can never become its owner by prescription. This was defined by the Fourth Council of Lateran, c. 41, and the reason is plain. For as soon as any one is conscious that he has something which belongs to another, he is bound to restore it to the owner, and the longer he keeps it against the owner's will the more grievous sin of theft does he commit. Positive law could not by prescription transfer another's property to one who was in bad faith, for such a law would not be for the common

good, but would foster crime. The user then by which property is acquired by prescription must be without the consciousness of wrongdoing; in one who frees his property from a servitude by prescription, there will be good faith if he put no obstacle in the way of the other's enjoying his right; he is not required to warn him that prescription is running against him. If during the time required for prescription a doubt about the right to the property occurs to the possessor, he must make all needful inquiries, and satisfy his conscience that at least no one else has a certain title to the property in question.

The time during which a predecessor in title held possession of the property may be reckoned together with the period during which the present possessor has held it in order to complete the time required for prescription, if possession was always held in good faith. Even if a predecessor in title was in bad faith, this will not prevent a successor from gaining a title by prescription, provided that the latter possesses the property in good faith for the full time required by law.

c. Inasmuch as good faith is required, as we have seen, and this cannot exist without some colorable, supposed, or at least presumed title, the third condition requisite for prescription is some sort of title. The quality of the title affects the period of time required for prescription by ecclesiastical law, as we shall see; no special title is expressly required by English law.

d. No prescription can be had without uninterrupted, open, and peaceable possession. The prescription must be *nec vi, nec clam, nec precario.* It is precisely the possession for the period required that furnishes the ground for the transference of ownership by prescription. When

the term is up, the property is vested in the possessor, who acquires also a right to all the fruits, if any, which he has meantime reaped from the property; for what is accessory follows the principal.

e. Different systems of law require different periods of time for prescription, and the time varies with different kinds of property.

According to canon law prescription for movables is completed after possession for three years with a colorable or supposed title; without any special title other than presumed possession must be held for thirty years.

Immovable ecclesiastical property can only be prescribed by forty years' possession; indeed a hundred years' possession is required to prescribe against the Church of Rome, and the same term has been granted as a privilege to many religious orders.

The term required by English law for the acquisition of rights by prescription varies according to circumstances. At common law, time immemorial was required to establish a prescriptive right, but the Prescription Act, 1832, provided that with respect to rights of common, and all other profits or benefits to be taken and enjoyed from or upon any land, where there shall have been an enjoyment of them by any person claiming right thereto without interruption for thirty years next before the commencement of any action upon the subject, the prescriptive claim shall no longer be defeated by showing only that the enjoyment commenced at a period subsequent to the era of legal memory. It is also provided that the time during which the adverse party shall have been an infant, idiot, non compos mentis, or tenant for life, or during which any action as to the claim shall have

been pending and diligently prosecuted, shall be excluded in the computation of the period of thirty years. But where there has been an enjoyment for sixty years the claim is to be absolute and indefeasible.

Rights of way and other easements, or any watercourse, or the use of any water, to be enjoyed upon, over, or from any land or water, and also as to the access or use of light to and for any dwelling-house, workshop, or other building, are prescribed after twenty or at least forty years, instead of thirty and sixty respectively. An uninterrupted enjoyment of lights for twenty years constitutes an absolute and indefeasible right to them.

3. Prescriptive rights may be extinguished by abandonment, express or implied; and after a period of twenty years' non-use, or sometimes even after a shorter period, abandonment will regularly be presumed. They are also extinguished by operation of law when the dominant and servient tenements come into the possession of the same owner in fee.

As we have seen, the right to real property is by the Real Property Limitation Act, 1874, extinguished after twelve years' adverse possession. The Limitation Acts which affect the ownership of real property differ from other Limitation Acts which concern personal property or a right of action in that the latter only bar the remedy after the lapse of the time fixed by law; they do not take away the right; the former on the contrary extinguish the right.

The conditions for prescription in the United States are in general the same as in England, except that as a rule a period of twenty years is necessary and sufficient to acquire both land and incorporeal hereditaments, and

also to extinguish those rights. In some States squatters who have cultivated plots of land in good faith may become owners of them by prescription in a shorter space of time than twenty years.

The subject of prescription is a thorny one in English law, and it would be imprudent for a confessor not otherwise specially skilled to venture to determine questions of right by prescription. What has been said will, it is hoped, enable him to judge how far conscience may follow the law, and when a penitent should be recommended to consult a lawyer.

NOTE. — If, as the author states, the subject of prescription be a thorny one in England, it will be readily admitted to be more thorny in the United States, when the fact is recalled that the forty-six States and some Territories not yet raised to the dignity of States have their limitation codes, indicating substantial differences from each other as well as from the limitation laws of England. The American reader will find Wood on Limitation (third edition, 1901) sufficiently exhaustive. In the appendix to this work the writer gives a list of the most important of those statutes, with the provisions for the United States and England (p. 695–800). It may be well to give here from the work just referred to a specimen of the limitation laws of one of the United States, *e.g.*, that of California:

CODE OF CIVIL PROCEDURE, 1885

PART II., TITLE II., CHAP. I.

SEC. 312. Time of Commencement of Actions in General. Civil actions can only be commenced within

the periods prescribed in this title, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

CHAP. II. AS TO REAL PROPERTY

SEC. 318. Seisin within Five Years, when necessary. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it shall appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years before the commencement of the action.

SEC. 320. Entry on Real Estate. No entry on real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the time when the right to make it descended or accrued.

SEC. 322. Occupation under Written Instrument or Judgment, when deemed adverse. Whenever it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property under such claim, for five years, the property so included is deemed to have been held adversely, except that, when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

SEC. 323. What constitutes Adverse Possession under Written Instrument or Judgment. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases: 1. Where it has been usually cultivated and improved. 2. Where it has been protected by a substantial enclosure. 3. Where, although not enclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant. 4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not enclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

CHAP. III. THE TIME OF COMMENCING ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

SEC. 335. Periods of Limitation prescribed. The periods prescribed for the commencement of actions other than for the recovery of real property are as follows:

SEC. 336. Within Five Years.

1. An action upon a judgment or decree of any court of the United States, or of any State within the United States.

2. An action for mesne profits of real property.

SEC. 337. Within Four Years.

An action upon any contract, obligation, or liability, founded upon an instrument in writing executed in this State.

SEC. 338. Within Three Years.

1. An action upon a liability created by statute, other than a penalty or forfeiture.

2. An action for trespass on real property.

3. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

SEC. 339. Within Two Years.

1. An action upon a contract, obligation, or liability, not founded upon an instrument in writing, or founded upon an instrument of writing executed out of the State.

2. An action against a sheriff, coroner, or constable, upon a liability incurred by the doing of an action in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this subdivision does not apply to an action for an escape.

3. An action to recover damages for the death of one caused by the wrongful act or neglect of another.

SEC. 340. Within One Year.

1. An action upon a statute for a penalty or forfeiture, where the action is given to an individual, or to an individual and the State, except when the statute imposing it prescribes a different limitation.

2. An action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the people of this State.

3. An action for libel, slander, assault, battery, false imprisonment, or seduction.

4. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

5. An action against a municipal corporation for damages or injuries to property caused by a mob or riot.

SEC. 341. Within Six Months.

An action against an officer, or officer *de facto:*

1. To recover any goods, merchandise, wares, or other property seized by any such officer in his official capacity as tax-collector, or to recover the price or value of any goods, wares, merchandise, or other personal property so seized, or for damages for the seizure, detention, sale of or injury to any goods, wares, merchandise, or other personal property seized, or for damages done to any person or property in making any such seizure.

2. To recover stock sold for a delinquent assessment, as provided in Section 347 of the Civil Code.

SEC. 342. Action on Claims against Counties. Actions on claims against a county, which have been rejected by the board of supervisors, within *six months* after the first rejection thereof by such board.

SEC. 343. Actions for Relief not hereinbefore provided for. An action for relief not hereinbefore provided for, *four years.*

SEC. 348. No Limitation. To actions brought to recover money or other property deposited with any bank, banker, trust company, or savings society, there is no limitation.

The Act of Feb. 28, 1893, chap. 45, limits suits against the State on contract or for negligence to *two years,* except as to minors and persons insane or imprisoned. — END OF NOTE.

Division II

The Violation of Justice

CHAPTER I

ON INJURIES IN GENERAL

1. The wide term *injustice* may be used to designate any violation of justice, whether it be legal, distributive, or commutative. Sins against legal justice are committed by doing anything against the common good of the society to which one belongs, or by neglecting to do what the common good requires to be performed. Such sins may be committed by rulers and by subjects, more frequently however by the former, inasmuch as the common good is specially entrusted to their care and guardianship. As the separate members of a society constitute that society, it is obvious that there is not a perfect and adequate distinction between a society and its members. In legal justice therefore, which regulates the relations which ought to subsist between men and the society to which they belong, there is something wanting to the complete distinction of persons required in order that the obligations of strict justice may subsist between them. A violation then of legal justice is not a sin against justice in the strict and full sense.

Distributive justice prescribes that the ruler divide common burdens and emoluments among his subjects

according to their capacity and merits. Before they are assigned to each one, no one has a strict right to any determinate share of them, and so a distribution of burdens and favors which is not according to merit is not against strict justice. A ruler, who in his distribution of offices and burdens shows undue favor to some to the detriment of others, sins indeed against strict justice if he thereby cause damage to the community, for strict justice and the implicit agreement which he made on assuming his office forbid him to do that. If, however, no special injury accrues to the community through his showing undue preference for some of his subjects, he commits a sin which is called acceptation of persons, but he does not sin against strict justice. On the other hand, one who violates particular or commutative justice deprives another of his strict right. Such a sin is called an *injury*, which may be defined to be the violation of the strict right of another against his reasonable will.

Such an injury is *formal* if it is committed knowingly and wilfully, otherwise it is *material*.

A *personal* injury is committed against rights which are intrinsic to the person, such as the right to life, liberty, good name, and honor. A *real* injury is committed against the property of another.

2. Personal injuries are treated of elsewhere under the Fifth and Eighth Commandments; here we consider more especially real injuries done to the property of another.

There are three different species of real injuries, robbery, theft, and simple damnification. Robbery besides injury to property includes also a personal injury, which consists in violence offered to another by forcibly depriving him

of what is his. Simple damnification is the causing of damage to the property of another without taking away any of that property. Theft is the secret taking away of the property of another against his reasonable will.

3. No action is an injury unless it is against the reasonable will of the injured person, *scienti et volenti non fit injuria*, according to the twenty-seventh rule of law in the Sixth Book of the Decretals. The reason is obvious; because a person may as a rule renounce his rights, and then an action contrary to them ceases to be a violation of justice. It is no longer a depriving another of what is his; it has ceased to belong to him. There are, however, some rights which are inalienable, and actions against these will be contrary to justice even if the party wronged give his consent. No one can validly renounce his right to life, and so the private killing of another, even with his consent, except in lawful self-defence, is always murder. Similarly, marital rights of married people are inalienable, and, even if the husband consent, a wife's adultery is always adultery. The maxim then must be understood of rights which the owner can validly forego, and it asserts that no injury is done by acting against rights which the possessor with full knowledge and with perfect freedom does forego.

CHAPTER II

ON THEFT

1. THEFT, as we have seen, is the secret taking away of what belongs to another against his reasonable wish.

Not only the taking away, but also the keeping of what belongs to another against his reasonable wish is theft, as when a borrower fails to return what has been lent him on the day appointed, to the disappointment of the lender. Moreover the use of, or any unlawful dealing with, the property of another against his wish is theft, as when a tramp makes himself at home for the night on another's premises, or when a passenger travels on the railway or tram without paying his fare.

In order that a sin of theft may be committed the owner of the property must be unwilling that it should be thus dealt with by the thief; there is no theft committed by using another's property if the user knows that the owner would not object. Moreover, he must be reasonably unwilling, and so a man who is in danger of dying from starvation, or who is in extreme necessity of any other kind, may take or use what is necessary to save life, even if the owner be unwilling that he should do so. The reason of this is that, by the primary intention of our Creator and Lord, material things were created for the preservation of human life, and no rights of ownership can prevail against the higher claim of one who is in extreme necessity.

2. The sin of theft is of itself grievous, as is clear from the fact that it is against justice and charity; and St. Paul classes it among the sins which shut the kingdom of heaven to the sinner.[1] However, like other sins of injustice, it is sometimes venial on account of light matter, and a practical question here arises as to when theft is a mortal sin, and when it is only venial. The same question is put in other words when we ask, What amount must be taken to constitute a mortal sin of theft?

3. Theologians are agreed that we must distinguish between the absolute sum, the taking of which is as a general rule necessary and sufficient in all cases to constitute grave matter, and the relative sum, which will be sufficient for grave matter, regard being had to the loss of the owner. The general principle on which the quantity required for grave sins depends is the damage caused by the theft. For it is a grave sin to cause grave damage without a just reason; but in the case of very rich persons or companies we must consider not only the personal and particular damage done to them by theft of what belongs to them, but also the harm done to society. It may well be that a rich millionaire would not be appreciably worse off for the loss of a hundred pounds or of ten times that sum. The damage done to him by a thief taking a hundred pounds would be relatively less than if sixpence were taken from a day laborer. However, we must also consider the harm done by theft to the community and to the security of property. The malice of sin is not measured merely by the harm done to the individual; the harm done to society and other considerations also enter into the estimate. We must then, besides con-

[1] 1 Cor. vi. 10.

sidering the damage done to the owner of stolen money, weigh also the harm which theft does to society. And if grave harm is caused to society by stealing a certain sum of money, if the security of property would be seriously imperiled unless the theft of a certain sum were forbidden under pain of mortal sin, that sum will be the absolute quantity required for a mortal sin of theft. What the precise sum is must be left to the judgment of experts, who will consider all the circumstances of time and place, for, as values are perpetually changing, the sum required for a mortal sin of theft will also change. Under present circumstances, in civilized countries where similar conditions of commerce prevail, the common opinion of theologians fixes one pound sterling as the absolute sum required for a grave sin of theft. This will serve therefore as a measure of the gravity of theft from very rich people, or from companies with large resources.

Note. — The author does not state whether the United States is to be considered as one of the class here mentioned, viz., of "civilized countries where similar conditions of commerce prevail," so that the theft of one pound sterling or five dollars should be held in this country as sufficient to constitute absolute matter for grave sin. It would seem difficult to hold such an opinion for the United States. The question is one of great importance for the confessor, when the case of binding his penitent *sub mortali* to make restitution arises. We must be slow to impose such grave obligation, unless it clearly exists; and this is the opinion of our best modern as well as of the older theologians. To determine with mathematical exactness the amount which is just sufficient and necessary

to constitute grave matter, that would be a mortal sin if stolen from an individual millionaire or a rich company, is quite impossible. We may be sure that a certain sum, for example a couple of dollars, would not suffice; we may be equally sure that the theft of fifty dollars even from a multimillionaire would suffice for absolutely grave matter, because in this latter case, though he might not suffer a grave personal injury, society demands such protection and human industry requires such a stimulus as to make it necessary to prohibit this theft *sub mortali.*

Now, is five dollars sufficient at the present day in the United States to constitute absolute grave matter? It is admitted by all that the gravity of matter is to be determined by the gravity of the damage done to the party injured or to society; also that the gravity of the damage may be estimated in money, so that goods stolen of greater or less money value will make grave or venial matter. Hence in the solution of the question the value of money in a given place at a given time must be considered in order to determine absolutely grave matter for that place and time. The more value money has in particular circumstances, or in other words, the greater the purchasing power it possesses, the less of it will be required to make grave matter; and on the other hand, if money has less purchasing power, a larger sum will be required to obtain grave matter. This principle seems evident and has been urged by the theologians during the past three centuries. It is likewise certain that to-day in the various countries of Europe the value of money is greatly diminished from what it was a century ago. It should also be noted that at any particular time money may be less valuable in one country than in another.

Bucceroni and D'Annibale, writing for Italy, set down thirty francs or six dollars as necessary for absolute grave matter; Waffelaert and Genicot considered that forty francs or eight dollars were required in Belgium; Lehmkuhl held that in places like England, where the value of money is less, the absolute grave matter might be placed between seven and ten dollars. Money is without any doubt less valuable in the United States than in England, and even since the opinions of the theologians just mentioned were first published the value of money has notably diminished in the United States. In this connection it will be useful to refer to bulletins published by the United States Government from the Department of Labor and Commerce. In one of these bulletins for September, 1904 (p. 1125), we find a table giving "level of wages and hours of labor in 1903 in leading occupations in the United States and in Europe." A comparison is made between four countries of Europe, Great Britain, France, Germany, and Belgium, with the United States in respect of the wages given to thirteen classes of workmen — blacksmiths, bricklayers, carpenters, laborers, machinists, etc. In every one of these employments the wages given in the United States are far in excess of what are given in any of the other countries named. Thus for bricklayers, 100 being set down for the United States, Great Britain has 37.7, Germany 24.3, France 24.2, and Belgium 15.4. Hence the purchasing value of money as regards work must be notably less in this country than in the others. Then, from another bulletin of the same department, published in July, 1906, it appears that wages have been steadily increasing in the United States. On page 2 of this volume we read: "The average wages per hour

in 1905 were 18.9 higher than the average for the ten-year period from 1890 to 1899 inclusive." Besides, it must be admitted that the cost of living in the United States is higher for the various classes of society than for similar classes in European countries. While there are some articles which may be procured here as cheaply as in Europe, it is to be remembered that the cost of living arises from many sources. Expenditure not only for the necessary food and clothing, but likewise for housing, fuel, lighting, furniture, amusements, luxuries, etc., must be taken into account. The department has published many detailed statistics on this subject, from which it may be gathered that more money is expended in this country than in European countries for obtaining the commodities necessary or convenient for living.

It would seem, therefore, that, whether we consider the purchasing power of money as indicated by wages or by the cost of living, it is less in the United States than in Europe, and accordingly a larger sum should be set down as necessary to constitute absolute grave matter for the former than for the latter. From a comparison with European countries it is not unsafe to hold that for the United States at the present time not less than ten dollars is required for absolute grave matter, and that the sum required may reach even fifteen dollars. It has been argued that five dollars should be considered sufficient, because in one or more States of the Union the stealing of this amount constitutes by civil law a crime (grand larceny), quite distinct from that of stealing a smaller sum (petty larceny). However, it scarcely belongs to the civil authority to determine in this manner what is grave and what is light matter. Besides, one might similarly

argue that, because in the State of Missouri it is necessary to steal thirty dollars or goods of this value to have grand larceny, it follows that such a theft is required for grave matter.

It may be interesting here to note that one of the most eminent theologians living has declared that he sees no difficulty in assenting to the opinion of those who set down one hundred francs or twenty dollars as the sum required for absolute grave matter. See Palmieri's edition of Gury, vol. I, n. 607, where he uses the following words: "*Audivi alios viros doctos, qui ob valde in dies imminutum pecuniæ pretium vellent nunc materiam absolute gravem eam esse, quae centum plus minus francos exaequet, quibus haud aegre assentimus.*" While few will be willing to follow this opinion even for the United States, where a larger sum is required than in Europe, we should on the other hand guard against holding as practically certain that five dollars is sufficient at present in the United States to constitute absolute grave matter. — End of Note.

However, a mortal sin of theft may be committed by stealing a much less sum than one pound if the theft cause great harm to the owner of what is stolen. The loss of a day's wage or of a sum which is sufficient for the support of a laborer and his family for a day, is a serious loss for a workman, and so, as the common opinion holds, the theft of such a sum from a laboring man is a grave sin. Something between this and the absolute sum will be grave matter if stolen from persons whose wealth is between the two extremes.

Matter which in itself is grave may become light on account of special circumstances. Thus although grave necessity does not excuse theft, yet it may lessen the sin

and cause to be venial what would otherwise be mortal. In the same way, less unwillingness on the part of the owner may lessen the sin. A father is less unwilling as a rule that a little of his money should be taken by a member of his family, especially if it is for a good purpose, than by a common thief. On this ground some divines say that in thefts from parents a double quantity is required for grave matter. Also when a number of small thefts are committed, which in the aggregate amount to grave matter, a larger sum is required for a mortal sin than when it is all taken at once. For the loss is not felt so keenly, and so the owner is not so unwilling.

4. That small thefts may coalesce and constitute grave matter is certain, for by a number of small thefts grave harm may be done, and the opposite opinion is implicitly condemned by the 38th proposition condemned by Innocent XI. Small thefts coalesce if the intention of the thief is to take a considerable sum, but for some special reason he takes it in small quantities at different times. Similarly, if a number conspire together to steal from another, they will all commit grave sin if grave damage be inflicted, even though each one only obtains a small sum. Also, when the proceeds of pilferings are hoarded, grave sin will be committed when grave matter is reached, or even if the proceeds be spent and do not coalesce by accession as in the preceding case, the different pilferings will coalesce and constitute one moral act of injustice if the interval be not notable, not over two months, as some theologians say. On the other hand, small thefts committed at wide intervals of time, and which do not coalesce on account of any of the reasons given above, do not constitute one moral act, and remain so many venial sins of theft.

The theft of something of small money value, but whose loss is very keenly felt for reasons of affection or association, will be a venial sin against justice, but a mortal sin against charity, if it was foreseen that its loss would cause very serious pain to the owner.

Division III

On Restitution

CHAPTER I

ON RESTITUTION IN GENERAL

When other sins have been committed they are blotted out and reparation as far as possible is made for them by sincere sorrow and repentance. But when commutative justice has been violated it is not sufficient to be sorry for the injustice done; reparation must be made for it by putting, as far as possible, the person injured in the same condition as he would have been if the injury had never been inflicted. This reparation for an injury that has been done to another is called restitution. There is a strict obligation in justice to make restitution as far as is possible to another whom one has injured; for justice requires that each one should have his own; but one who has been injured is deprived of his own so long as restitution has not been made; and so, in order that each one may have his own, in order that that equality may be preserved which justice prescribes, restitution is of strict obligation whenever commutative justice has been violated. It is an obligation of justice, and so it is a grave one, unless the matter be light.

As justice may be violated either by taking away from another what belongs to him, or by damaging or destroying

his property, so we may consider restitution as being due either because one has what belongs to another, or because he has inflicted on him unjust damage and loss. These are called by theologians the *roots* of restitution. We will treat of them successively, and finally of the obligation of making restitution on account of cooperation in injustice.

CHAPTER II

THE FIRST ROOT OF RESTITUTION

THE first root of restitution is the possession of another person's property without any just title. This possession may hitherto have been in good faith without any suspicion that the property belonged to somebody else, or it may have been in bad faith with the knowledge that some one else was the rightful owner, or in doubtful faith with doubts about the ownership. The obligations of the possessor of another's property will be different in these three cases. We will treat of them in the three following sections.

SECTION I

Possession of Another's Property in Good Faith

1. When one discovers that he is in possession without any just title of what belongs to some one else, justice requires that he should restore it to the rightful owner, or at least give the owner warning so that he may remove it at his own expense. For justice requires that all should have their own, *res clamat domino*, and if one knowingly detains what belongs to another against the owner's reasonable wish he commits the sin of theft.

If the possessor of another's property consumed it while he was in good faith, and now when he finds out the truth, he neither has the property itself, nor its equivalent, he

is bound to nothing, *res perit domino*. The property no longer exists, and cannot be restored to its true owner; there was no fault committed by consuming what was supposed to belong to the consumer, so there is no obligation to make compensation to the owner for his loss. This is all the more true if the property was destroyed, or perished by accident, or in the ordinary course of nature.

2. If any natural or civil fruits, derived from the property of another, still remain after the possessor has found out that the property belonged to some one else, he must restore them to the owner of the property to whom they belong, for *res fructificat domino*.

Fruits of his own industry acquired on occasion of his possession of the property of another, he may keep, for the laborer has a right to the fruit of his toil.

Mixed fruits, which are partly due to industry, partly to the natural or artificial fertility of the property, belong partly to the laborer, partly to the owner of the property, according to what the law may prescribe, or according to the estimate of a prudent man.

3. The foregoing rules tell us what has to be done when one discovers that he has possession of the property of another, or when such property has perished while in his possession. But suppose that while he was in good faith the possessor of another's property, he sold it to some one else, and afterwards he finds out that it was not his to sell, what are his obligations in that case?

No general answer can be given to this question; it will be necessary to distinguish according to several possible hypotheses.

The sale may have taken place in market overt, and then though the seller could not give a valid title to the property,

yet the law does so. The Sale of Goods Act, 1893, sec. 22, makes the following provision: "Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller."

According to Indermaur, "By sale in market overt is meant selling goods in open market as opposed to selling them privately. In the country the market-place or piece of ground set apart by custom for the sale of goods is in general the only open market there; but in London, and in other towns where so warranted by custom, a sale in an open shop of proper goods is equivalent to, and in fact amounts to, sale in market overt." [1]

In spite, however, of sale in market overt, "Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise." [2]

In this case "on conviction of an offence which involves larceny, the court, if the accused has sold the property to an innocent purchaser, on restitution of the property to the owner, may order the price paid by the purchaser to be repaid to him out of any money found on the convict when arrested. This provision is in addition to that allowing compensation to a person injured by a felony." [3]

If the sale did not take place in market overt, and the stolen property has not been restored to the true owner,

[1] Principles of the Common Law, p. 323, 6th ed.
[2] Sale of Goods Act, 1893, sec. 24.
[3] Encyclopedia of Laws of England, *s.v.* Stolen Goods.

the seller is bound to nothing in justice, according to a very probable opinion. For the property is no longer in his possession or under his control, so he cannot restore it to the owner; if he received money for it, he received it in good faith for value, and when he has mixed it with his other moneys it would seem that he makes it his own.[1] It would seem that this is in accordance with English law; "A mesne possessor acquiring the goods innocently from the thief, and reselling before conviction, is under no liability in trover to the original owner." [2]

It was said above that the seller is bound to nothing in justice, but if without relatively serious inconvenience to himself he can, by giving the requisite information, procure the restoration of the property to its rightful owner, he will be bound to do this out of charity.

If the property was not sold in market overt, and if it has been restored to the rightful owner, the purchaser can demand back the purchase money from the seller, rescinding the contract for failure of warranty which is implied in every such sale: "In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is: 1. An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass; 2. An implied warranty that the buyer shall have and enjoy quiet possession of the goods." [3]

These solutions would seem to be tenable whether the mesne possessor obtained the property in good faith by

[1] Stephen, 2, p. 60.
[2] Encyclopedia of Laws of England, *s.v.* Stolen Goods.
[3] Sale of Goods Act, 1893, sec. 12.

purchase or by gift, and whether he gained anything or not by selling it. For although one who possesses another's property either in itself or in its equivalent is bound to make restitution to the owner, a mesne possessor who has sold it in good faith to another no longer possesses it even in its equivalent, for the price after being mixed with his own moneys is not its equivalent; and although he is the richer by the transaction, yet it cannot be said that he is the richer unjustly, and so he is not bound to restitution.[1]

It is a disputed point among theologians whether a purchaser in good faith from a thief of stolen goods, on finding out that the goods were stolen, may return them to the seller if he cannot otherwise get back his money. It would seem that in conscience he may do so, for in so doing he does not wrong the rightful owner; he replaces the goods where he found them, so to say, and they are in no worse a position through having been for a time in his possession. He is justified in leaving them there if he cannot otherwise save himself from loss.[2] Such an action, however, might bring him into collision with the law of the country. In England it might amount to misprision of felony or be considered compounding a felony.

Section II

Possession of Another's Property in Bad Faith

1. When one has wrongfully had possession of another's property, well knowing that he had no right to keep it, on coming to a better frame of mind he is bound in the first place to restore the property itself to its rightful

[1] Bucceroni, 1, n. 1341. [2] St. Alphonsus, 3, n. 569.

owner. Moreover, if the owner has suffered any special loss through being deprived of what belongs to him, the thief must make this good, inasmuch as he was the unjust cause of it. Furthermore, all natural or civil fruits of the property he must restore to the owner, for *res fructificat domino;* and if they have been consumed, their value must be given to him or else he will not have his own. Any fruits which are due to the industry of the thief, and all necessary and useful expenses which he incurred in respect of the property, he may in conscience deduct from what must be restored to the owner, for justice only prescribes that each one should have his own, not more than his own.

2. If another's property is saved from fire, or from certain destruction in any other way, it still belongs to the former owner, for *res clamat domino.* At most, he who saved it has a claim to reasonable compensation for his trouble. If stolen goods perish in the hands of the thief, he must make restitution for them to the owner, unless they would have perished in the owner's hands at the same time and in the same way. For if they would have perished at the same time and in the same way, the thief is not the cause of their destruction; otherwise he is, and he must bear the consequences.

If stolen property had different values after the theft, the owner's losses must always be made good; and so if he intended to sell it when at its highest value, that value must be restored to him. Usually, however, if the property itself cannot be restored, it will be sufficient to restore the value which it had at the time of the theft. This is the teaching of many theologians, and it seems to be in agreement with the provisions of English law: "The

measure of damages in an action for conversion is the actual loss sustained by the wrongful act. In general, this would be the market value of the goods at the time of conversion. . . . And the jury on the trial of an action for conversion may also give damages in the nature of interest over and above the value of the goods converted." [1]

Section III

Possession of Property in Doubtful Faith

1. There is only question here of one who has well-grounded reasons for thinking that something in his possession belongs to another. We do not contemplate the case of one who merely suspects without solid reason that what he has belongs to some one else, much less the case of one who is ignorant of what title he has to his property. The doubtful faith of such a one as we are contemplating may date from a period subsequent to his obtaining possession of the property, or it may date from the time of his gaining possession of it; the possessor's obligations will be different as one or the other of these suppositions is verified.

2. When the possessor was at first in good faith but afterwards a doubt arose as to whether the property really belonged to him, inquiry must first of all be made to try and find out the true owner. Unless the possessor in doubtful faith does this, he exposes himself to the danger of keeping what does not belong to him, and thereby sins against justice. If he discovers the rightful owner, the doubt is solved; if after inquiry the question of ownership still remains doubtful, the possessor may keep the property

[1] Encyclopedia of Laws of England, *s.v.* Conversion, Action of.

and use it as his own, for *in dubio melior est conditio possidentis.*

3. If the possession began in doubtful faith, and the property was taken from another's possession, injustice was committed, and the whole must be restored to the original possessor, for possession was in his favor.

If the property came into the hands of the doubtful possessor by sale, or gift, or in some other lawful way, presumptions may sometimes be used to solve the doubt. Thus even though we get a more than usually cheap bargain, we need not conclude that the seller is a thief, for *nemo malus præsumitur nisi probetur.*

If the doubt cannot thus be settled, nor the question of ownership cleared up by diligent inquiry, theologians commonly teach that the property must be divided according to the probabilities of the case. For one who began to possess in doubtful faith cannot claim the benefits of possession and keep the whole. He may, however, keep a portion corresponding to the degree of probability of his right of ownership. A few recent theologians, however, doubt whether this solution rests on solid grounds, for even the possessor in doubtful faith has at least the fact of possession in his favor, and, *ex hypothesi*, it is not certain that he is not the rightful owner; in fact, he has some claim to be considered the rightful owner. These theologians therefore would permit the possessor in doubtful faith to retain the property, provided that he be ready to surrender it to the rightful owner if and when he should appear.[1]

[1] Bucceroni, 1, n. 1354.

CHAPTER III

THE SECOND ROOT OF RESTITUTION

SECTION I

On Damnification in General

1. WHOEVER wilfully causes unjust damage to another, even though he himself obtained nothing by his unjust action, is bound to make restitution to him as far as he can. For he is the unjust cause why another has not what belongs to him, and in order that justice may be done he must cause the person damaged to be put as far as possible in the same condition as he was in before the damage was done. He must then make restitution not only for all the damage which he intentionally caused, but for all consequent losses as far as they were in general foreseen.

2. In order that such an obligation may be imposed, certain conditions must be fulfilled which it will be well to state more explicitly.

a. The damage must be inflicted voluntarily, with knowledge and the will to do the wrong. For a man is only responsible in the forum of conscience for his free and voluntary actions. There must be theological fault, as theologians express it, otherwise there will be no obligation in conscience to make good any damage, at any rate before lawful sentence of a judge competent to impose

such an obligation. For the law sometimes imposes the obligation of making good damage which has been done, even though it was not foreseen or intended. This is especially the case when there has been legal negligence, or the omission of that diligence which the law requires in the circumstances. There are three degrees in this negligence: "*Ordinary* neglect has been defined to be the omission of that care which every man of common prudence, and capable of governing a family, takes of his own concerns; *gross* neglect is defined to be the want of that care which every man of common sense, however inattentive soever, takes of his own property; and *slight* neglect to be the omission of that diligence which very circumspect and thoughtful persons use in securing their own goods and chattels." [1] In some cases the law punishes even slight neglect, in others ordinary, in others only gross neglect. The omission of that care which the law requires in the case is called juridical fault, and after sentence there will be an obligation in conscience to make good damage caused through juridical fault, for the laws prescribing this are just, inasmuch as they make men more careful and conduce to the public good.

If something has been done without foreseeing that it would cause damage to another, but this danger was noticed before the damage actually took place, there will be an obligation in justice for him who performed the action to prevent the damage as far as he can; if he does not do this, he will be bound to restitution. For as long as he can prevent the evil consequences of his action, this is under his control, and may from the point of view of morals be considered as continuing, and thus unless he prevents

[1] Chitty, The Law of Contracts, p. 412.

the evil when he can do so, the agent is the voluntary cause of it. If, however, he cannot prevent the damage without relatively serious inconvenience to himself, there is just cause for excusing him. And so, if I inadvertently throw a lighted match on the ground, and then notice that it may probably cause a conflagration with loss to others, I am bound in justice to extinguish the light, otherwise I must repair the damage done.

If slight negligence caused slight damage to another, there will be an obligation of repairing it under pain of venial sin. If slight negligence caused serious loss to another, there is a difficulty as to whether before any judicial sentence there be an obligation to make restitution. Many theologians deny that there is, for no grave obligation can arise from a slight fault, and a light obligation has no proportion to serious matter; there cannot be a light obligation to avoid homicide, for example.[1]

b. In order that there may be an obligation to make restitution for causing damage to another, the damage must be really and objectively unjust. If damage to another follows from the lawful exercise of my rights, I am not bound to make it good. If I dig a well in my property and thereby deprive my neighbor of his supply of water, I am not bound to make restitution for the damage. Similarly, I may sell a new machine or invention, though it may indirectly cause loss to many, who had on sale machines of older pattern for which now there will be no market. I may lawfully use persuasion to induce a rich relative to leave his money to me, though others who would have had it thereby suffer loss. If, however, I make use of unjust means such as threats, violence, or

[1] St. Alphonsus, 3, n. 552.

calumny, and so prevent another from getting what he otherwise would have got, I commit a sin against justice and am bound to make restitution to the injured party. This is true even though he had no strict right to what he would have got, for at least he had a right not to be balked of his expectations by unjust means. And so in a competitive examination or concursus where something of value is the prize at stake, one who secures the prize by unjust means must make restitution to him who would otherwise have secured it. If there were no certainty of his securing it, restitution as far as possible must be made according to the degree of probability of his success.

c. The unjust action must be the cause, not merely the occasion, of damage being done to another, in order that there may be an obligation of making restitution. For we are only responsible in justice for damage which we have caused. And so if I commit theft and others are induced to do the same by my bad example, I am indeed bound to make restitution for what I have stolen, and I commit a sin against charity by giving bad example to others; but probably at least, according to many theologians, I am not bound to make restitution for what others stole through my bad example. Similarly, I am not bound to make restitution for damage which was caused accidentally by my action, when there was antecedently no probable connection between my action and the damage caused. As, for example, if I lit a fire in my property, and there was no probable danger of its causing damage to my neighbor, I am not in conscience before judicial sentence bound to make good damage which it caused him on account of an unforeseen change in the direction of the wind. Some theologians would bind the man who lit

the fire to restitution in this case if he hoped for the change of wind and intended the damage. They say that the wrongful intention supplies the want of physical causation and puts him under the obligation of making restitution. This opinion is probable, but the opposite also is probable, for although the evil intention makes the man guilty of affective injustice, he is not guilty of effective injustice, for his evil intention makes no difference in the physical sequence of cause and effect, and if he was not the cause of the damage prescinding from his evil intention, that evil intention could not make him the cause.

In the same way, if the theft of one servant is wrongly imputed to another, and this one is dismissed in consequence, the thief is not bound to make restitution to the injured man unless in some way he caused the false imputation.

One who is not sure whether any harm was caused by his action is not bound to make restitution, for a certain obligation cannot arise from an uncertain source. Whether there is any obligation of making restitution for damage which was certainly caused, but it is uncertain whether the author was A or B, is a disputed point among theologians. Many teach that there is an obligation on all the probable authors in common to make good the damage, and each will be bound to make good the whole in default of the rest. This is certainly true in case of conspiracy; but if each acted independently, and it is not certain which one caused the damage, it is hard if the burden of restitution is imposed on some one who perhaps did not cause the harm.[1]

If an incendiary intended to set fire to the house of A,

[1] Bucceroni, 1, n. 1369.

and by mistake he destroyed the house of B, it would seem that he is bound to make restitution, for all the requisite conditions are present. His action was voluntary, really, and effectively unjust. Some theologians, however, deny that the obligation of making restitution can be imposed in such cases. For the injury should be formal, and they deny that it is formal in this case. He did not intend to injure B; it was purely by mistake that his house was burnt down. Some weight must be allowed to this opinion on account of the authority of those who maintain it, but it would seem to be over-subtle and against the common sense of mankind. The injury was formal, inasmuch as it was voluntary and knowingly unjust. This is sufficient to induce the obligation of making restitution; it is not necessary that the wrong-doer should intend to injure a definite person.

Section II

Particular Cases of Damnification

1. He who by fraud, violence, or other unjust means leads another to commit sin, or deprives him of any supernatural or natural good belonging to the soul and mind, is guilty of injustice, and is bound to make reparation to the injured party. If the same effect is produced by persuasion or other not unjust means, a sin of scandal is committed; but justice is not violated, nor is there any obligation to make restitution. These principles are not only applicable to sin, but to vocation to the religious state, and to sound doctrine, especially of the practical order.

Priests, or masters, who by their office are bound to instruct others and teach them the truth, are in a special manner obliged to correct any false instruction which they may

have given. Better leave people in ignorance than imbue their minds with falsehood.

2. There is a controversy among theologians as to whether there is an obligation apart from the just sentence of a judge for one who has injured another in one species of goods, as for example in his reputation, to make restitution to him in goods of another order, as for example, in money. A competent judge may of course impose such an obligation according to the rules of equity; but apart from positive law the opinion which denies any strict obligation to do this seems the more probable. For if justice imposed such an obligation, equality would have to be secured between the injury inflicted and the compensation paid. This, however, seems impossible in such a case, for there is no common measure of reputation and money. Moreover, however large a sum of money were paid in compensation for detraction, the reputation which had suffered would not thereby be restored. Justice, however, requires that what has been taken away should be restored, not something else.

3. When one has injured another's reputation by slander or detraction, he is under a grave obligation in serious matters to restore his neighbor's good name as far as he is able, and to make reparation for all other damage which the injured party has suffered in consequence of the slander or detraction. If he has lost his position or money, restitution of these must be made as far as possible. We saw above that more probably the detractor is not bound to pay money precisely in compensation for the injured reputation, unless condemned to do so by competent authority. The mode of restoring the injured reputation of another will vary according to circumstances. If no other way

presents itself, the slanderer must say that he spoke falsely, for the reputation of the innocent is of more consequence than that of the guilty. A detractor who has injured the good name of another by making known his secret sin, cannot of course say that he spoke falsely, but he must do what he can in some other way towards the desired end. There will be no obligation to do anything if the calumny or detraction has been forgotten, or if the injured party has lost his reputation in some other way, or if the injured party prefers that the matter should not be reopened, or if it is physically or morally impossible now to do anything towards restoring his good name.

4. One who has unjustly wounded another, according to the more probable opinion as we have seen, is not bound to make compensation in money for the wounding or mutilation. He is, however, bound to make restitution for all expenses to which his action has subjected the injured man, and for all other money losses which followed in consequence of loss of work, position, etc., and which were in some way foreseen by the wrong-doer. If the injured man dies, restitution must be made to his heirs or legatees for all the expenses he was put to or the losses he suffered on account of the unjust action. If in consequence of the injury inflicted the injured man cannot provide for wife, children, or parents, or if death ensued, the wrong-doer will be obliged to provide at least what is necessary for their support. For these had a right not to be deprived of their support by the unjust action of the wrong-doer. There are no necessary heirs according to English law, and it is a controverted point whether restitution is due to other heirs, relatives, or creditors who have suffered damage from the injury inflicted. It is probable that inasmuch as

injury to such people is not necessarily connected with unjust wounding or homicide, and only follows from it in a remote and accidental manner, there is no obligation to make compensation to others besides the above-mentioned.[1]

Whether the injured man can release the wrong-doer from the obligation of providing for his family who are dependent on him, is a disputed point among divines. Many approved theologians hold the affirmative on the ground that the family acquire their right to compensation through the injured man, who therefore can release the wrong-doer from all obligation to make restitution. This opinion is certainly probable, and so in case of a duel where both parties have freely consented to fight, and therefore freely accept the consequences of their action, there will be no strict obligation for the victor to make any compensation for wounding or killing his adversary.

5. *Scienti et volenti non fit injuria;* and so if a woman suffers loss of reputation, position, or money, in consequence of fornication freely committed, no restitution will be of strict obligation. Even for criminal assault or rape no restitution in money is of obligation to compensate precisely for the loss of virginity. But the man who has been guilty of this crime must make restitution for other losses, and either by marrying the woman wronged or by providing her with a dowry, he must as far as possible put her in the position in which she would have been if he had not wronged her.

6. No money compensation is of obligation on account of adultery when no child has been born of the adulterous intercourse. If a child has been born, and loss ensues to

[1] Lugo, disp. 11, n. 77.

the husband who is compelled to support a child which is not his, or to the family because one who has no right comes in for a share of the inheritance, compensation must be made by the guilty parties. Great difficulties would arise if an adulterous wife made known her crime to her husband, so she is not bound to do this; nor is a child bound to believe the sole assertion of his mother that he is illegitimate. Compensation must be made in other ways as far as possible. In practice, however, if husband and wife are living together, it will rarely be certain whether a child that is born is the fruit of adultery or not, and the presumption is that it is legitimate. If they are not living together, the adultery will be patent to the husband, and if he consents to support the child and treat it as his own, the obligation of the adulterer will cease.

CHAPTER IV

ON COOPERATION IN INJUSTICE

THE question of restitution is complicated and beset with special difficulties when there are more agents of injustice working together than one. There will, indeed, be the same roots of restitution which we treated of above, but difficulties arise as to who among the cooperators is bound to make restitution, and who is primarily bound. One may help another, or cooperate with another, in inflicting an injury in various ways. Nine ways are commonly enumerated: by counsel, by command, by consent, by provocation, by praise or flattery, by being partner in the sin, by concealment, by defending the ill done. In the first six of these ways the cooperation is positive, in the last three it is negative. Something must be said about each.

1. One cooperates with another in injustice by counsel when by giving advice or by urging motives, or by showing how it may be done, he causes that other to commit an act of injustice. Such a one is obviously the moral cause of the injury and all the conditions required for imposing an obligation of making restitution are present. If the principal agent was already determined to commit the injury, this will in that case not be due to the counselor, and he will not be bound to repair it. Nor will the counselor be bound to make reparation to the principal agent for

any loss which the latter suffered in consequence of inflicting the injury, unless he induced him to act by fraud or other unjust means. Moreover, if before the injustice was committed the counselor efficaciously withdrew his advice, and proposed equally strong motives for desisting from the act, it would seem that he cannot be obliged to make restitution. If, however, he had showed the other how to commit the crime and thus made it possible, he must take means to prevent it being committed, otherwise he will be responsible. Confessors, lawyers, doctors, and others whose expert advice is asked are under a special obligation not to give advice which is injurious to their clients or to third parties. If they do this, they will be bound to make compensation to the injured party not only when they acted maliciously, but also when they gave injurious advice through gravely culpable ignorance or precipitancy. Others who do not specially hold themselves out as experts will not be bound to compensate those who ask their advice and suffer loss through following it. No injury was done by giving them what they asked for, no fraud was committed by the assumption of skill or knowledge which was not possessed; if they chose to follow the advice, they took the risk on themselves, and *scienti et volenti non fit injuria.*

He who follows unjust advice acts in his own behalf and in his own name, and so is the principal cause of the injury done. He is bound in the first place to make restitution, and if he fail to do so the counselor is bound.

2. We cooperate in injustice by command when by whatever means we induce another to do an injury in our name and on our behalf. It does not matter whether one of the parties is in a position of superiority with respect

to the other or not, nor by what means he induces the other to perform the injurious action, whether by threats, or promises, or commands, or requests; it is sufficient if by any means he induces the other to do his unjust will. Henry II made himself guilty of the blood of St. Thomas à Becket by complaining that none who ate his bread would avenge the insults offered him. Mere approval, however, of injustice which has already been done does not render him who approves liable to make restitution.

One who by command induces another to commit an injury is bound in the first place to make reparation for the injury and for all the damage which was the necessary consequence. In his default the instrument of his injustice is bound to make restitution. The one who gave the command is not bound to compensate his agent for loss or damage which he suffers in executing the will of his principal, unless compulsion or other unjust means were used to procure his cooperation. Nor is he bound to make restitution for damage which his agent did in excess of the instructions given. Furthermore, if before the command is executed he recalls it and the recall is notified to the agent, he will not be responsible for what the agent may do on his own authority; he will be responsible, however, if by any chance the intimation that the command is recalled does not reach the agent.

3. One who cooperates in injustice by giving his consent or vote that the unjust action should be done is bound to make reparation if his consent was the moral cause of the injustice. And so members of legislative bodies who agree together to pass an unjust law are jointly and severally bound to make reparation for all the harm that the law does. Jurymen, too, whose vote is necessary for an unjust

verdict are all responsible for the injustice if they give the verdict. Sometimes, however, when injury is inflicted by the unjust votes of many, the obligation of making restitution will depend on the manner of voting. If all acted conjointly, giving their votes in a body, each and all will be responsible for the harm done; if, however, the voting took place successively, those who voted first and whose votes were necessary and sufficient for passing the unjust measure will indeed be bound to make restitution; but those who voted subsequently and whose votes were not required to make the measure law, may be excused from the obligation of making reparation except in the case of conspiracy, though they, too, sin against justice. Those who give an unjust vote when it is the only means of preventing a greater evil do not do wrong, and are not bound to make restitution. When one of two evils is necessary, we may lawfully choose the less.

4. Whoever by provocation or ridicule, or by praise or flattery, causes another to commit an injury, or is the cause why reparation is not made for injustice committed, is himself bound to make restitution in the same way as one who is the cause of injustice by counsel.

5. One may be a partner in the infliction of injuries in various ways. He who helps another to perform an unjust action is a partner in injustice in the strict sense. One, however, who receives stolen goods or affords protection to a wrong-doer, and so encourages him in committing injustice, is also a partner in his sin. A receiver of stolen goods is obviously bound to restore them to their owner, and if by holding himself out as ready to receive them, or by affording protection to the thief, he is the cause of injustice being committed, he will be responsible

for that too. To what extent the partner in injustice is bound to make restitution will depend on circumstances. He will be responsible for the whole damage inflicted if it could not have been inflicted without his help, or if the partners conspired together to commit injustice. Otherwise it will be sufficient to make reparation for such part of the damage as each respectively caused, in the estimation of a prudent person.

When treating of charity we saw that it was never lawful to cooperate formally in another's sin, but that according to the principle of a double effect it is sometimes allowed to cooperate materially in the sin of another. This doctrine may be applied to the matter before us, and so though it is never lawful to help another to do what is always and intrinsically wrong, as to kill an innocent person, yet in other cases it is not sinful to cooperate materially with the unjust action of another. A servant who is threatened with instant death unless she gives up a key to a robber, or shows where her master's money is kept, would act heroically if she died rather than betray her trust; she would not commit sin if she preferred her own life to her master's property.

6. On account of one's office, or in virtue of a special contract, there is sometimes a special obligation to prevent injury being done to others, and if the obligation be not fulfilled, there is negative cooperation in the injury inflicted. Apart from such special office or contract we are bound in charity to prevent injury to others as far as we can, but not in justice. This negative cooperation may be committed by concealment of injustice which has been done, as when a servant conceals thefts committed against his master's property which has been entrusted to his care.

It may be committed by silence, as when a policeman accepts hush money to say nothing about a robbery. It may also be committed if one whose duty it is to protect another's rights or property neglects that duty, and allows them to be injured. On account of defence of an unjust act which has already been done there will not arise an obligation to make restitution, unless such defence was the cause why restitution was not made for the crime defended. All approbation and defence of wrong-doing is nevertheless sinful. One who culpably neglects to prevent his animals from doing harm to his neighbor is bound to make restitution.

Sometimes these negative cooperators are excused from performing their strict duty on account of the very serious inconvenience to which it would subject them, and which they are not presumed to have obliged themselves to undergo. In such cases they will be excused from making restitution for injuries which they did not prevent.

CHAPTER V

THE CIRCUMSTANCES OF RESTITUTION

In this chapter we will treat of certain questions concerning the circumstances of restitution, as, to whom restitution is to be made, how much, in what order, in what manner, at what time and place.

Section I

To whom Restitution is to be Made

1. Restitution is compensation for an injury inflicted, and so in general it must be made to him who suffered the injury. This will in general be the lawful possessor of the property taken or damaged, to whom, therefore, restitution must be made if he is known for certain. If the property was taken from a child, or from a servant who merely held it for his master, it may be restored to the father of the child or to the master. If it belonged to a corporation, it should be restored to those who administer its affairs.

2. In case of doubt as to whom the property belongs diligent inquiry should be made, and if the doubt cannot be resolved, the property should be divided among those who are the probable owners if they are few in number. If they are many and uncertain, restitution may be made to the poor or to religious purposes of the place where the injury was committed, for the true owners may in the

circumstances be presumed to wish that this should be done. If the property cannot well be devoted to local charitable or religious purposes, it may be spent elsewhere on such causes. When shopkeepers and others are bound to restitution for defrauding their customers, the persons injured are not altogether unknown, and restitution can best be made by restoring to future customers what has been unjustly taken away.

3. If the true owner is altogether unknown and cannot be discovered, property which has been obtained without injustice may be retained, and treated as property found, in which the finder has a qualified ownership.

If the property was obtained through wrong-doing it must be surrendered, the common good requiring that nobody should benefit by his own theft or fraud. Theologians are practically agreed on this, and that restitution must be made to the poor or to religious purposes; but when they inquire further into the reason for the doctrine they are divided in opinion. Some maintain that it is grounded on the positive law of the Church which expressly provides that what has been unjustly obtained by usury or simony must be given to the poor or to pious causes, and the same decision has been extended to similar cases. On this ground they explain the action of the Church, which sometimes grants compositions for just cause to debtors whose creditors are uncertain. Other theologians with greater probability teach that the doctrine rests on natural law, which the Popes interpreted and applied to gains made by usury and simony. For natural law requires that nobody should benefit by his own wrong-doing, so that restitution must always be made of ill-gotten goods. If restitution cannot be made to the individual owners,

partly by interpreting their personal wish, partly because if the property is usefully expended on the poor in their behalf they will benefit spiritually by it, partly because inasmuch as the community is wronged by theft, restitution must be made to the community, and this is done by choosing the poor or religious objects; the obligation is satisfied by restoring to these.

Section II

How Much is to be Restored

1. We have already seen what must be restored in the case of one who is in possession of another's property, or in case of unjust damnification to another. In general, the damage inflicted is the measure of the restitution to be made, for justice requires that the owner should have back his own. When there were several who cooperated in injustice a special difficulty arises as to whether each and all are jointly or severally bound to make restitution. If two thieves assist each other to break into and rob a house, what are the obligations of each of them with respect to the restitution to be made?

2. In such cases as this each must of course make restitution for the harm which he personally and immediately caused. If each one takes his share and makes reparation for that portion of the injustice which he committed, the whole damage will be repaired. But sometimes some of the partners of injustice are unable or unwilling to make restitution for their share in the unjust act; the question then arises whether the rest are bound to make good the whole damage inflicted.

Each and all will jointly and severally be bound to make

reparation for the whole damage, or *in solidum*, as divines say, when each and all were jointly and severally the efficacious moral or physical cause of the whole damage; for we are bound to make reparation for the damage which we have caused, and for that alone. This will be the case under the following circumstances:

a. When the action of each and all is the necessary and sufficient cause of the whole damage. This condition is fulfilled when one commands or counsels an unjust act, and another in consequence performs it.

b. When the action of each is sufficient to cause the damage, and it has an actual effect in producing it, though the effect would have been produced without it. Thus if two men inflict fatal wounds on another, each is responsible for his death, and all losses necessarily connected with it. In the same way when several conspire together to commit an injury, and mutually encourage and assist each other to inflict it, all are bound jointly and severally to make restitution.

c. When the action of each is necessary for the production of the effect, so that it could not be produced without it, though the action of each would not be sufficient by itself, all are bound jointly and severally to repair the injury. Thus if two thieves carry off a safe which they could not carry alone, each in the other's default must make good the whole damage.

When several acting together, but without mutual conspiracy in the strict sense, inflict injury on another, divines are not agreed as to whether each and all are bound to make reparation for the whole damage. Each is certainly bound to repair the damage due to his personal action, but probably he may be excused from restoring more than

is equivalent to the damage which he actually caused. Thus though those responsible for an unjust war are bound to make compensation for all the unjust damage which it causes, yet the private soldiers are only bound to make restitution for the damage which they personally cause. In the same way, if a crowd damage the property of an obnoxious political opponent, individuals who formed the crowd will only be obliged to make good the damage which they severally caused. Similarly, if injustice be done by picketing in a strike, the leaders will be bound to make reparation for all the injuries inflicted; the men who take part in it may be excused if they contribute their quota.

Section III

Order of Making Restitution

When several have cooperated in some act of injustice for which they are bound to make restitution there may be question as to who is primarily bound, and whether the others are excused if he repairs the damage. The answer to such questions will be clear from what follows.

When those who cooperated in injustice are only bound to restore ratably, no order need be observed among them. Each must fulfil his obligation independently of the others and restore his share. Even if they are bound jointly and severally to make restitution, but all cooperated in the unjust act in the same way, as, *e.g.*, by conspiracy and mutual help, the question of order will not arise. Each and all are bound to restore their quota, and in default of any the rest are equally bound to indemnify the injured person. If this has been done, those who indemnified the injured party will have a claim against the defaulters.

2. If, however, those who are guilty of an injustice in common cooperated in it in different ways and degrees, so that, for example, one gave the command, others executed it, and others who were bound to prevent it neglected to do so, then it is plain that all are not equally primary causes of the injustice, nor are all equally bound to make restitution. In such cases the cooperators are bound to make restitution in the following order: *a.* If any one has the property of the injured person he must restore it, for *res clamat domino.* *b.* One who cooperates by command is the principal cause of the injury; the rest merely act in his name and for his advantage, so that he is primarily bound to make good the damage done. *c.* Thirdly, those who inflicted the damage will be bound to make it good. *d.* Then others who cooperated positively by advice, consent, or flattery, will be bound. *e.* Finally, those who cooperated negatively.

If the primary causes of the injustice make restitution, the rest will be free, whereas if the secondary causes who merely acted for others restore to the injured party, the primary causes will thereafter be bound to make restitution to them.

3. The question of order of payment among creditors also arises when a debtor is insolvent and cannot pay all in full, for if he can pay all in full, order of payment is not of consequence. If a man cannot pay his debts as they become due, he will be adjudicated a bankrupt, and his property will in general be divided ratably among his creditors. Some debts, however, have priority according to English law, and must be paid in full if the assets are sufficient for the purpose; otherwise they will abate equally among themselves. "These are (1) Rates and taxes. . . .

(2) The wages or salary of any clerk or servant, not exceeding £50, in respect of services rendered during four months prior to the receiving order. (3) Wages of any laborer or workman, not exceeding £25, for services, whether time or piece work, rendered during two months prior to the date of the receiving order." [1]

NOTE. — The law of the United States regarding preferred creditors is found in the 64th Section of the National Bankrupt Act of 1898 as amended in 1903, and is as follows:

"SEC. 64. Debts which have priority. (*a*) The court shall order the trustees to pay all taxes legally due and owing by the bankrupt to the United States, State, County, District, or Municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of such taxes the same shall be heard and determined by the court.

(*b*) The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be:

1. The actual and necessary cost of preserving the estate subsequent to filing the petition.

2. The filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred, or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery.

3. The cost of administration, including the fees and

[1] Encyclopedia of Laws, *s.v.* Bankruptcy.

mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases as the court may allow.

4. Wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and

5. Debts owing to any person who by the laws of the States or of the United States is entitled to priority." — End of Note.

"A secured creditor has four courses open to him: (1) He may rest on his security, and not prove. (2) He may realize his security, and prove for the deficiency. (3) He may value his security, and prove for the deficiency, after deduction of the assessed value. (4) He may surrender his security, and prove for the whole debt." [1]

The debts of a person lately deceased must be paid by the executor or administrator in the following order: "First, the funeral expenses; next, the expenses of probate or taking out administration, including the costs of an administration action and other executorship expenses; and then the debts of the deceased are payable out of legal assets in the following order: *a.* Crown debts due by matter of record, a surety to the Crown having the like priority; *b.* debts having priority by statute, *e.g.*, under the Friendly Societies Act, 1896, s. 35; *c.* debts of record

[1] Encyclopedia of Laws, *s.v.* Bankruptcy.

consisting of judgments in courts of record and recognizances; *d.* debts by specialty and simple contract." [1]

NOTE. — According to American law the costs of administration come first, so that, if funeral expenses are incurred by the executor or administrator, these are to be enumerated among the costs of administration. If they are incurred by another without the order of executor or administrator, they are to be ranked as preferred debts and after costs of administration. In North Carolina, debts arising from lien on property are preferred to funeral expenses of the latter sort: in Rhode Island, to debts due to the United States. Physicians' bills and other expenses of last illness in some States are treated as funeral expenses; but if there be no statutory provision to this effect they will be considered as debts of the deceased. Of the debts created by the deceased before death those due to the United States come first, so that after costs of administration, including taxes and funeral expenses, are paid, debts of the general government come next. In many States, as provided by statute, debts due to the State rank before debts due to citizens. In some States debts of record or judgment and mortgages are reckoned as preferred debts coming next in the order of priority. Wages due to domestic servants and laborers on a farm are in many States constituted a preferred class, but as to the precise position they occupy as preferred the State legislatures do not all agree. After payment of the preferred debts all liabilities of the deceased of whatsoever kind are to be paid pro rata. See Woerner, American Law of Administration, vol. 2, p. 821 to 845. — END OF NOTE.

[1] Encyclopedia of Laws, *s.v.* Executors and Administrators.

If, however, the deceased died insolvent, on the petition of one or more of his creditors, whose debt would have been sufficient to support a bankruptcy petition against him if he had been alive, his property will be administered as in bankruptcy according to English law.

NOTE. — The American law of bankruptcy does not make any provision such as is here set down for England. The Bankrupt Court of the United States has no jurisdiction to settle the estate of deceased upon a petition filed against the representatives for an act of bankruptcy committed by the deceased. See Brandenburg on Bankruptcy, sec. 227. — END OF NOTE.

If a debtor makes a payment of money or a delivery of property to a creditor not in the ordinary way of business and without any pressure or demand on the part of the creditor, knowing that his circumstances are such that bankruptcy will be the probable result, he is guilty of a fraudulent preference in English law. Such fraudulent preference is void against the trustee in bankruptcy, if made within three months before the bankruptcy petition is presented. There is a similar provision in American bankruptcy law, but the period is four months instead of three.

NOTE. — The bankruptcy law of 1898 as amended by the act of 1903 for the United States defines preference as follows in Sect. 60. "A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor

of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. When the preference consists in a transfer, such period of four months shall not expire until four months after the date of recording or registering of the transfer, if by law such recording or registering is required. — END OF NOTE.

Those who are on the verge of bankruptcy should not, of course, give such preferences to any of their creditors merely with the intention of favoring them at the expense of other creditors. If they cannot pay their debts in full, the claims of justice are the same for all, and all creditors should share alike. If such a preference has been given, the property must of course be surrendered to the official receiver or trustee on his demand. But supposing that he does not come to the knowledge of it, and makes no demand for it, is the preferred creditor bound to surrender the property of his own accord? There would seem to be no obligation in conscience to do so. He has only received payment of what was due to him, as we suppose; he might have demanded payment, and then the insolvent debtor might lawfully have paid it. No valid reason can be urged to show that in accepting full payment of his debt before the debtor's bankruptcy the preferred creditor commits an act of injustice against the other creditors. If he does not commit an act of injustice against them, he is not bound to make restitution to them. At least this opinion would seem not to be destitute of all probability in its favor.

Section IV

The Manner of Making Restitution

1. In the internal forum of conscience it is sufficient to indemnify the injured person for the injury which he has suffered, and in whatever way this is done conscience will be satisfied. Restitution then may be made by one's self or through another, with or without the knowledge of the injured party, under the guise of a gift, or by extra work in the case of a servant, or greater diligence than is otherwise of strict obligation. If the form of a gift or present is chosen, and the donee makes a present in return, this may not be accepted if the principal motive for making it was to make a return for the present received, otherwise it may be retained when the receiving of the present was rather the occasion than the cause of the return being made.

2. In English law payment through the post is not a valid discharge of a debt unless the creditor expressly or by implication designated that method of payment. However, in conscience, it would seem that a possessor in good faith of another's property is released from all further obligation if he choose means for making restitution which are ordinarily safe and secure. He is only bound to use ordinary care and diligence in restoring the property, nor is he bound to do this at his own expense.

According to the common opinion of theologians, one who possesses another's property in bad faith must see that the property is again put into the possession of its true owner, so that if he send it by post and it is lost, he is still bound to make restitution, unless the means chosen were expressly designated by the owner. However, there is a good opinion which excuses even the possessor

in bad faith from further obligation if he took ordinarily secure means to restore the property to its rightful owner. The creditor may be presumed to consent that such means as the post, or the confessor, should be chosen for making restitution, and if the property is lost, *perit domino.*

The possessor of another man's property in bad faith must restore it to the owner at his own expense. If the individual property cannot be restored without very great expense, restitution may be made in money with the presumed consent of the owner.

Section V

The Time and Place of Making Restitution

When an obligation of making restitution arises from contract, the terms of the contract must be observed with regard to time and place. Otherwise, in general, restitution must be made as soon as possible, and the unjust possessor of another's property will be responsible for all loss arising from even inculpable delay, as far as such loss could be foreseen. He became responsible for such loss when he took unjust possession of his neighbor's property. He must, moreover, at his own expense, as we have seen, take means to put the owner in possession of his property again. The possessor of another's property in good faith must not delay restitution unreasonably, but he is not responsible for unavoidable delay, nor is he bound to bear the expenses of making restitution.

CHAPTER VI

CAUSES WHICH EXCUSE FROM RESTITUTION

1. One who is *per se* bound to make restitution may sometimes be excused from doing so for special reasons, either entirely, or at any rate for a time. It is plain that if the owner does not expect or wish restitution to be made, although he was unwilling to be injured, the obligation will cease. A rich father may be unwilling that his son should take from him a sum of money without his permission, but after it has been done he may not care to exact restitution. Similarly, a wealthy man would be very angry if a neighbor took one of his horses out of the stable and used it for a day's work; he might demand an apology, but he probably would not take any money compensation; he does not keep livery stables.

2. Physical or moral incapacity to make restitution will be a valid excuse as long as it lasts. If a man has no means, or if he cannot make restitution without reducing himself to beggary, it will be sufficient if he have the wish and intention to restore when he is able to do so. Sometimes it may be possible for one who has stolen a large sum which he cannot at once repay to lay by a little at a time and thus by degrees save the amount required. If this can reasonably be done, it will be of obligation. It would be unreasonable to expect a man to make restitution when it could not be done without costing a great deal more than the

object restored was worth, or when restitution of a sum of money would lead to loss of reputation, position, and future prospects. If in such cases means exist for making secret restitution, they should of course be adopted.

When a man becomes bankrupt all his property, with the exception of the tools of his trade and the necessary wearing apparel and bedding for himself, wife, and children, to the value of £20, will vest in the official receiver and trustee. These officials will also be able to claim for the benefit of the creditors future acquisitions of property until the bankrupt has obtained his discharge. The question arises whether after a bankrupt has obtained an absolute discharge he is still liable in conscience to pay any residue that remains of his debts, or whether he is free in conscience as he is in law. There can scarcely be a doubt that the civil authority can release a bankrupt from all future liability if it choose to do so. Especially in trading communities it may be for the public good that an honest but unfortunate trader should be able to begin again, without being weighted with a heavy load of past debts. If the law releases a bankrupt debtor from all future liability, the rate of interest will soon accommodate itself to the circumstance. So that it is merely a question of fact, as to what is the effect of any particular bankruptcy law. In most countries, as in America, it seems that the law only grants the bankrupt legal exemption from future molestation on the part of his creditors; it does not free him from the moral obligation to pay his debts in full if ever he becomes able to do so.

NOTE. — The statement here expressed that the civil law in America gives the bankrupt only a legal exemption

and does not free him from the moral obligation of afterwards paying the residue of the debt may, it would appear, be fairly called in question. Since the matter is a very practical one for confessors in this country, it is deserving of careful examination. We may suppose in a given case that the formalities required by civil law have been fully carried out by the debtor, and that he has made a full and accurate statement of his financial condition, withholding none of his assets from the knowledge of his creditors, nor giving any preference to one creditor before another except so far as the bankruptcy law admits of such preference. It may be also supposed that the necessity of making an assignment or compromise arose without any fault, at least any grave fault, on the part of the debtor and that there was no fraud practised by him on the occasion of his failure; on the other hand, there was no agreement made to pay the balance of the debt. The debtor is a Catholic in the United States who wants to ascertain whether he will be bound in conscience to pay that balance, if he should become able to do so; and to obtain the desired information he has recourse to his confessor.

What should be the answer to the query? In other words, what is the effect of the discharge granted by the judge in favor of such debtor? Is it merely that all legal action for recovering the balance of the debt is denied to the creditors, while the debtor remains bound to pay that balance?

An important aid for arriving at a proper solution of this question is to determine as far as possible the meaning of the Bankruptcy Act passed on July 1, 1898, when a uniform law, which is still in force, was enacted by the United States Congress for all the States and Territories

of this country. It does not pertain to our present inquiry to discuss the various clauses of this act, or the persons or classes of persons excluded from its benefits, or included therein; but it will be useful to make a short extract from the act in so far as it deals with the discharge of the debtor.

In Section 14 we find as follows: "Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which proceedings are pending. . . . The judge shall hear the application for a discharge, and such proofs and pleas as may be made thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offence punishable by imprisonment as herein provided," etc. In Section 17 the following words are used: "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due to a tax levied by the United States, etc."

We have now to examine the effect of these enactments as they operate in the United States to-day.

It may be safely held that the civil power has authority under certain circumstances to enact such a law as would release the debtor from the obligation of full payment, while that obligation might have remained if that law did not exist. If the legislative body of any nation confining itself to matters subject to its jurisdiction enact a measure whose effect will be to promote the public good, there is no sufficient reason to deny it such authority. In the concrete case under consideration the United States Congress has power to pass a law affecting business men so that by

conforming to certain just conditions they would, in the event of inability to pay all their debts, be released in conscience from such obligation. The effect of such legislation would be to produce in them a healthy stimulus to engage in some other occupation, or resume their former one, without any hindrance to success, such as would exist if they were bound in conscience to pay the balance of their debts. Now, that the civil power in the United States intended to exercise its full authority in liberating the bankrupt from the obligation of paying the residue of his debt, there are some weighty reasons for holding.

1. There is nothing in the wording of the act itself to prove that the discharge should be limited to a mere denial of a legal action for the balance of the debt. "*Ubi lex non distinguit, nec nos distinguere debemus*" is a useful rule of canonists and theologians in the interpretation of laws. Indeed, the definition of *discharge* as given in the first chapter of the act itself seems to suggest a real liberation. "Discharge shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this act."

2. When a doubt arises regarding the correct interpretation of a law, it is proper to consider the intention of the legislator. Now the manifest purpose of the United States Bankrupt Act is to enable insolvent debtors to be engaged in some employment without being handicapped in the race of life through debts which they previously incurred. It is also clear that this end is more effectually attained if the act be so interpreted as to liberate from the moral obligation of making full payment. If the creditor could call upon the debtor after the latter has received a legal discharge and justly demand payment of the balance

due, even though he could not urge his claim before the court, and if the debtor's conscience would rightly repeat to him the strict obligation under pain of mortal sin to make such payment, there would exist a very serious hindrance to his worldly prospects scarcely intended by the legislator.

3. All classes of insolvent debtors, Catholic and non-Catholic, should receive proportionately equal benefits from the operation of the law, which ought to be so interpreted as to produce this effect, if it be capable of such interpretation. To apply this principle, let us take the circumstances as they exist to-day in the United States. Of those applying to the Bankrupt Court seventy-five or eighty per cent. are non-Catholics, who pay no attention to obligations of conscience of this sort, being occupied solely with escaping penalties for the violation of civil laws. If the remaining twenty-five or twenty per cent. who are Catholics be held as bound to pay the residue of debt, it is clear they will not receive the same advantages from the act as the others. Let it be observed that the argument here presented is not that those outside the Church do not fulfil their obligation of paying their bankrupt debts, and that therefore Catholics may be permitted to act similarly; but the argument is that in equity to the parties affected by the act, it should be so interpreted as to operate equally for Catholics and non-Catholics when such an interpretation is possible.

4. If the Bankrupt Law be so interpreted that the moral obligation remains, the civil authority would appear to be protecting dishonest people in their dishonesty, since it would virtually say to such bankrupts, "You need not pay the balance of your debts." It is plain that the civil

authority would thus be acting against the purpose for which it was instituted, and therefore beyond its power.

The foregoing arguments would have little force, if there were any authentic interpretation setting forth that it was not the intention of the United States Congress to remove the moral obligation. It belongs to the Supreme Court of the United States and to it alone to give such an interpretation as would be final. The judges of inferior courts may deliver their opinions regarding the meaning of the law, but these may be set aside by the Supreme Court. Now there has been no decision or declaration of the Supreme Court of the United States that the Bankrupt Act of 1898 does not liberate the bankrupt from all obligations of paying the residue of the debt; nor does there appear to be any decision of a lower court to this effect. An individual writer on bankruptcy may hold the opinion that the moral obligation is left unaffected by that act; but the opinion of one or even many such writers would not suffice to prove that this is the common view of American jurists. Hence we must fall back upon the ordinary rules of interpretation to obtain the true meaning of the act, and, as has been seen, the application of those rules seems to indicate a liberation in conscience.

There is another line of argument which may be properly adduced for a solution of the question we are considering. All theologians admit that a debt may be remitted by him to whom the debt is due. If I owe a man $100, and if he forgive me this debt, my obligation of paying it *hoc ipso* ceases. This cause of the remission of a debt arising from the will of the creditor is obviously quite distinct from the one referred to above, which derives its force from the civil authority. Hence, if the State did not grant a bankrupt

liberation from payment of the balance of his debt, or even if it expressly declared by statute that the obligation remained, any creditor could say to his debtor, "I forgive your debt," and the debtor would be freed from the obligation of restitution. Now when a person becomes a bankrupt, or makes a composition with his creditors, in the United States, is there usually a remission of the debt on the part of the creditors? Certainly the creditors would wish to get full payment; they would even urge their claims before a civil tribunal, if they could; but knowing that this is impossible they do not expect to receive anything more than is granted under the agreement, or by the decision of the judge, nor would they subsequently dream of asking anything. By assenting to such an arrangement there appears to be some kind of remission on the part of the creditors. It is not an express remission, for the creditors usually say nothing about remitting the balance of the debt; but it seems to be sometimes a *tacit* remission, in which the silence of the creditor sufficiently indicates his assent to the remission; or it is a reasonable assumption on the part of the debtor that nothing more is looked for by the creditor. The latter might have refused to accept such terms as were offered by the debtor and thus have manifested his intention of remitting no portion of the debt; but not doing so, it is not to be wondered at that the impression would exist among business men and others that a bona-fide bankrupt may be considered excused from the obligation of paying anything more than what the creditors agreed to accept or the court decided should be given. In dealing with this argument it will be instructive as well as interesting to refer to the opinions of some of our eminent theologians.

Genicot (vol. 1, n. 604) says: "*Attamen sicubi communis*

persuasio invalesceret, denegata propter cessionem bonorum nova actione judiciaria, etiam desinere omnem obligationem in conscientia, id practice admitti posset. Nam cum creditoribus singulis fas sit expressam exponere conditionem ne cessio valeat ad reliqua debita extinguenda, ipsi sibi imputari deberent quod, vigente tali persuasione, non melius sibi consuluissent." Similarly, Bierbaum, in his latest edition of Elbel's Moral Theology, published in 1905, holds that the bankrupt may sometimes be liberated from the obligation of paying the residue of the debt, and adds (vol. 1, p. 405), "*Sententia illa præsertim inter mercatores videtur admittenda.*" Sabetti, who as is well known wrote his work on Moral Theology for the United States, clearly insinuates that owing to the circumstances in which merchants carry on business the obligation to pay the balance of the debt may cease to exist. "*Attamen* (n. 463) *si quandoque ex rerum adjunctis apparet creditores velle omnia condonare, vel alicubi ita fieri commercium ut ratio habeatur inter mercatores probabilis futuræ cessionis bonorum, non videtur tunc cur imponenda sit obligatio in perpetuum.*" In giving the foregoing extract from Sabetti's work it is right to state that the author, following Gury and many others, held that bankruptcy, whether judicial or voluntary, does not release the debtor from the obligation of paying the entire debt. In order to confirm his opinion and show its application to the United States he quotes the following words from Kent's Commentaries: "It was stated by the Chief Justice, in giving the opinion of the Supreme Court of the United States in Sturgess v. Crowninshield, 4 Wheaton, 122, that the insolvent laws of most of the States only discharge the person of the debtor, and leave his obligation to pay out of his future acquisitions in full force."

It should be noticed, however, that the opinion of the Chief Justice referred to was delivered at a time when the several States of the Union had their own insolvency laws and cannot be applied to the present condition of things, in which there is a uniform law for the entire country granting a full and absolute discharge from debts. Besides, the words quoted plainly suggest that while the laws of most of the States left untouched the obligation of paying the residue, the laws of the other States liberated the debtor. It is also to be borne in mind that Sabetti published his opinion many years before the passing of the Bankrupt Act of 1898, in which year the author died, so that he had not the opportunity of expressing his views upon the effect of the new legislation regarding the question we are considering. Still, as we have seen from his own words, written before the new act came into force, circumstances might exist which would indicate a remission of the entire debt.

Having given the opinion of Sabetti, it will be well to see what two other eminent theologians, writing in and for the United States, have held on this subject. Archbishop Kenrick published his second volume on Moral Theology, comprising De Justitia, in 1841, the same year in which Congress passed a Bankrupt Law for this country, which law was repealed in thirteen months, leaving the relations of debtor and creditor to be determined by whatever laws individual States might choose to enact for themselves. This celebrated writer preferred to hold the opinion that Congress did not intend by the law of 1841 to liberate the conscience of the debtor, while, however, he held as probable the opposite opinion, viz. that Congress removed the obligation in conscience regarding the residue of the debt. "*Cæterum quum probabile sit Congressum alto dominio usum ut*

obligationem etiam conscientiæ tollat, etc." (De Justitia, n. 207).

The other well-known theologian of the United States is Konings, who in his Moral Theology (n. 861) proposes the question: "*An cessio bonorum a solutione integra liberet?*" He gives the arguments put forward by those who defend the negative as well as the affirmative side of the question, but refrains from declaring which opinion is to be preferred, saying: "*Viderint sapientiores.*"

I have mentioned those three American theologians in particular, because they are the chief authors who in the United States have written a moral treatise dealing with the subject, and because living in this country they were in a better position to understand existing conditions. When one reflects that they wrote at a time when there was no Federal Bankrupt Act at all, or, as in the case of Archbishop Kenrick, it was only a few months in existence, it should not be a matter of surprise that they did not advocate more strongly the opinion in favor of a liberation of the debtor. It was not easy to pronounce with certainty immediately after the enactment of the Insolvency Law of 1841 that the legislature intended to remove the obligation in conscience regarding the balance of the debt; hence we may perceive the hesitancy of Archbishop Kenrick in giving his opinion. Similarly, since Sabetti and Konings wrote within a period when there was no uniform Bankrupt Act for the United States, they had some reason to refrain from declaring that the creditor should be generally considered as remitting the remainder of the debt. If these authors were now, after the Bankrupt Act has been in operation for over nine years, to express their opinion, it would scarcely be rash to say that they would hold the

debtor's obligation extinguished, either on the ground of a full remission being granted under the Act, or by the consent of the creditor.

There are other arguments presented by some theologians in favor of a liberation of the debtor, but as they seem to be of less force, or of limited application, they are here omitted.

It is not denied, nor can it be, that against this view there is a difficulty, which at first sight may appear formidable, if not wholly insuperable. In moral questions just as in matters of dogma the opinion of theologians is of considerable importance; and the greater the number of theologians holding a particular view, the more likely it is to be the correct one. As a rule, when a comparatively large number of theologians hold a particular opinion in dogma or morals, there is a solid reason for maintaining that opinion. Then if it be found that those theologians have written at different times, and even in different centuries, the opinion acquires additional weight, especially if they have been generally recognized as eminent. Now it is to be admitted that for a long period — from the sixteenth century down to the present time — nearly all the great theologians of the Continent of Europe have held that *cessio bonorum*, or assignment, whether judicial or voluntary, does not excuse from paying the residue of the debt. That such is the fact can be verified by any one who takes the trouble to examine the works of those writers. Let it suffice to quote a few.

Lugo, De Justitia et Jure, disp. 21, sec. 3, n. 40, writes: "*Vera tamen et communis doctorum sententia negat extingui obligationem restituendi*," etc. St. Alphonsus, (lib. 4, n. 699), following Busembaum, holds also the obligation of the bankrupt to pay the whole debt: "*Quod*

si (bonis cedens) tamen postea redeat ad pinguiorem fortunam, tenetur adhuc restituere." Ballerini in his Opus Theol. Mor., vol. 3, p. 451, says: "*Ceterum regula ex communi DD. sententia est, quod si cedens bonis venerit in pinguiorem fortunam, tenetur, quantum potest, ad integra solvendum ac restituendum, etiamsi bonis cesserit in publico judicio et subierit ignominiam.*" Other theologians of ancient and modern times holding the same view might be added almost *ad indefinitum.*

Now what answer can be given to this argument derived from the almost unanimous consent of theological writers? Simply this; their opinion was the correct one in regard to those countries for which in particular those theologians were writing. The Roman civil law, which for many centuries has to a large extent prevailed through Europe, while granting certain privileges to the debtor making an assignment to his creditors, set forth distinctly the obligation of paying the residue of the debt. Thus in one section of that law we find the following words: "*Qui bonis cesserint, nisi solidum creditor receperit, non sunt liberati. In eo tantummodo hoc beneficium eis prodest, ne judicati detrahantur in carcerem.*" Another section of the same law says as follows: "*Apertissimi juris est . . . si quid postea eis pinguius accesserit, hoc iterum usque ad modum debiti posse a creditoribus legitimo modo avelli.*"

When we consult modern theological writers, they tell us that the civil code for various countries of Europe contains a similar enactment regarding the obligation of paying the balance of the debt. Thus Tanquerey in his Synop. Theol. Mor., vol. 3, n. 674, writes: "*In Gallia statuitur debitorem non liberari nisi secundum ea quæ solvit, ita ut, si nova bona acquirat, teneatur ea dimittere usque ad inte-*

gram solutionem." Bulot, in his Com. Theol. Mor. (vol. 1, n. 659), refers to article 1270 of the French code as enacting that the obligation of the bankrupt to make entire restitution is not extinguished, but only deferred. Genicot (vol. 1, n. 604) testifies that such is the civil law of Belgium; Bucceroni (Inst. Theol. Mor., vol. 1, n. 1466) gives the same testimony for Italy; and Ferreres (Comp. Theol. Mor., vol. 1, n. 719) says the same for the civil law of Spain.

Now when the civil code of a nation sets down expressly the obligation of the bankrupt to pay the balance of his indebtedness, it is easy to understand how theologians writing for such a nation would hold that the obligation in conscience remains, unless indeed the creditors might be considered as remitting the balance, which, of course, they could do independently of the civil code. But let us suppose a nation where the civil code contains no such enactment and does not make any suggestion to this effect, but which grants "the release of a bankrupt from all his debts, etc." It may be safely affirmed that in this supposition the modern as well as the older theologians would hesitate to hold that a bankrupt remains bound to pay the residue. Hence the manifest answer to the proposed objection is that the theologians of Europe have been dealing with a question affected by circumstances altogether different from those existing in the United States in reference to the same question.

From what has been hitherto said we may be enabled to arrive at some conclusion regarding the question proposed in the beginning of this note, what should be the answer of a confessor to a bona-fide bankrupt in the United States inquiring about the obligation to pay the residue of his debt. Two arguments have been brought to prove the non-

existence of this obligation. One is derived from the civil authority exercising its powers of legislation so as to grant a release not only effective in denying any legal action to the creditors, but also effective in the forum of conscience, so that the debtor would not be bound *coram Deo* to make full payment. It has been shown that the Bankrupt Act of the United States not only can, but ought to be interpreted in this sense. The other argument is founded upon a virtual remission of the debt on the part of the creditors, if the Bankrupt Act did not extinguish the obligation. It is true that if the civil law authority exercises its power to remove from the bankrupt the obligation in conscience, nothing would remain to be remitted by the creditors, but it might happen that a debtor might not be persuaded of this exercise of power on the part of the State; yet from the attitude of the creditors towards him on the occasion of bankruptcy and subsequently, he would be sufficiently assured of a real remission. These arguments appear to be of much weight and even sufficient to produce practical certainty for the opinion in whose support they are adduced. Even if the confessor should hold the opposite opinion as probable, he has no right to impose it upon his bankrupt penitent; rather he is bound to allow him the benefit of the probability. — End of Note.

In England, on the other hand, by an absolute discharge "the debt is extinguished," "the bankrupt becomes a clear man again," in the words of lawyers who discuss the effect of English bankruptcy law. A composition or scheme of arrangement with one's creditors has the same effect as an absolute discharge when it has been approved by the Court.

CHAPTER VII

ON OCCULT COMPENSATION

1. What another owes me in justice I have a right to have, and if he refuse to give it to me I may compel him by having recourse to law. Sometimes, however, this means of enforcing my rights is uncertain, costly, and accompanied by great inconvenience. Under certain conditions I shall be safe in conscience if I covertly take what belongs to me. If I do this I only take my own; I only defend myself from a continual injustice which was being inflicted on me by one who detained my property against my reasonable will.

2. Such an act of occult compensation, as theologians call it, may be allowed in conscience on four conditions:

a. The debt must be morally certain. If I have only a probable right, I may have recourse to the law to have the question decided, but with only a probability on my side I must not deprive another of what he possesses with a probable right on his side. In such a case, *melior est conditio possidentis.*

b. There must be a difficulty in vindicating my right by ordinary legal process. For if there be no difficulty, I must not take the law into my own hands; public order and peace require that. Even though from occult compensation there be no fear of a breach of the peace, yet no man is a safe judge in his own case.

c. I must not secretly take what belongs to me when there is likelihood of being paid after all. By so doing I should wrong my debtor, and be paid twice.

d. I must take compensation in the same kind of property as far as possible; the debtor must not be forced to sell or barter his property against his will. Of these conditions the first is the most important, but all should be loyally and conscientiously observed in those special cases when we may have recourse to occult compensation.

Part VIII

THE EIGHTH COMMANDMENT

The Eighth Commandment of the Decalogue is, "Thou shalt not bear false witness against thy neighbor."[1] Primarily it forbids the giving of false evidence, especially in a court of justice, against one's neighbor, by which his reputation is unjustly injured. But because the same effect is produced by rash judgments, calumny, tale-bearing, backbiting, contumely, lying, and the betrayal of secrets, all these sins are also forbidden by this commandment. Inasmuch as it is virtually positive it prescribes the telling of the truth.

[1] Ex. xx. 16.

CHAPTER I

ON RASH JUDGMENTS

1. A JUDGMENT is a firm assent of the mind to a proposition without fear of mistake, and if such an assent is given without sufficient grounds it is a rash judgment. The term, however, is used here only of judgments without sufficient reasons against the character of others, as that such a one is wicked, untrustworthy, a drunkard, and so on.

2. Such rash judgments, when they are formed deliberately with the consciousness that there is not sufficient ground for them, are sinful, and if the matter be serious they are gravely sinful. The reason is because all have a right to our good esteem unless they have forfeited it by their bad conduct; in judging others rashly we arrogate to ourselves an authority which we do not possess, and we use it unjustly against the character of our neighbor.[1] We thus violate justice, which in serious matters binds under grave sin.

3. Rash judgments, however, to which depraved human nature is so prone, are not usually grave sins in those who are striving to lead good lives. Rash and evil doubts, or suspicions, or opinions about others are frequent, but these, although wrong, are not as a rule gravely sinful, for they do not inflict serious harm on our neighbor's reputation.

[1] James iv. 13.

4. It is no sin to think that another is wicked, or has committed a sin, if we know it to be a fact. Nor are we obliged to think that all men are good until we know something to the contrary. We may suspend our judgment about such as we do not know sufficiently well to be able to say whether they are good or bad. We know, moreover, that there are many bad people in the world, and prudence suggests that we should be on our guard against all whom we do not know well, though justice and charity incline us to think no evil of any one.

Rash judgments frequently arise from the malice of our own hearts, or from hatred and envy.[1] If we purify our own hearts from vice and wickedness we shall think kindlier thoughts of others.

[1] Rom. ii. 1.

CHAPTER II

ON DETRACTION

1. Detraction, slander, or backbiting is committed by unjustly depriving another of his good name in his absence. If this is done by falsely imputing to him something which injures his reputation it is called calumny. Tale-bearing is a similar sin and consists in making mischief between friends by telling tales to the disadvantage of one of them. All these are sins against justice and charity, for they tend to deprive our neighbor of his good name, "which is better than great riches," and to which he has a strict right until he forfeits it by his public conduct. Even if what is said to the disadvantage of our neighbor be true, we have no right to make it known to his discredit, as long as it is not public, for he still retains his reputation, he still has a right to it, and he must not be deprived of it without just cause. Even the dead retain their right to their good name, for death does not make them non-existent, and men are prepared to do and suffer much for the sake of leaving a reputation behind them. Besides, speaking ill of the dead frequently besmirches the living. Not only individuals but corporate bodies have each their reputation, and detraction may be committed against a religious order, for example, or a diocese, as well as against individuals.

2. Inasmuch as detraction is contrary to justice and

charity, which as we have seen bind under a grave obligation, it will of itself be a serious sin, though frequently only venial on account of levity of matter. The measure of the gravity of the sin will be the harm which it causes to the person whose reputation suffers. The making known of the grave but secret sin of another with malicious intent or to his serious injury will certainly be a mortal sin. The disclosure of a venial sin of another or even of some hidden defect for which he is not responsible, as, for example, illegitimacy, may cause him serious damage and constitute a grievous sin. However, the making known of even a grievous sin of another is not always mortally sinful, for sometimes no serious harm follows from it. A notorious drunkard will not be injured appreciably if a secret sin of drunkenness is made public, nor a woman of doubtful reputation if some specific fall is mentioned. On the other hand, although a man has lost his reputation in one particular matter, he may still have one to lose in other matters, and if his secret sins in these matters be made known a more or less grievous sin of detraction will be committed. A man may be of notoriously loose morals but with a character still to lose for honesty and uprightness.

3. When a man has been tried and condemned in an open court of justice, there is no wrong done him by publishing the fact in the newspapers, or telling it to those who would not otherwise have heard of it. The judicial sentence penalizes him and deprives him of the right to his reputation in the matter touched by the sentence. This holds true of distant places and countries, and even of distant times. No injustice then is committed against one who has been legally convicted of crime by making this known in a place to which he has come in the hope of its not being known.

Uncharitable harm might be done against such a one if he was trying to lead a good life in his new surroundings.

Similarly the sin of detraction is not committed when a sin which is matter of common report in one place is made known in another, if the knowledge of it would be sure to penetrate there before long. It is a disputed point among theologians whether or not sin is committed in such a case if otherwise the knowledge would not penetrate to the place where it is made known. At any rate it is advisable to keep silence about such cases unless there be some good reason for making known the truth. If some one is thinking of employing an unknown servant whom we know to have committed theft from her former mistress in another part of the country, we are justified in making the fact known to the person concerned. It does not follow that we are justified in publishing elsewhere the sin of another which was well known indeed to a particular circle or community, but which was not really public. In such a case the right to one's reputation with the outside world has not been lost.

4. The right to one's reputation is not absolute. We are of course never justified in calumniating another by imputing false charges to him. But for just and sufficient reasons we may make known the secret sin of another. There are cases when this is necessary for the public good or for the protection of the rights of the innocent, and in a conflict of rights the stronger should prevail. Thus when lawfully summoned to give evidence in a court of justice we may witness to secret crime, and generally whenever the defense of ourselves, or of the innocent, or the good of the delinquent himself, or of our hearers, require the truth to be made known.

5. If by listening to a detractor we encourage him to slander another, we are formal cooperators in his sin and are as guilty as the detractor himself. If our listening is not indeed the efficacious cause of the detraction, we do not sin against justice, but we sin against charity if we could prevent the detraction and do not do so. For charity obliges us, as we saw above, to correct an erring brother and to prevent harm being done to our neighbor as far as possible. It is true that private individuals will seldom be bound by a grave obligation in this matter; frequently they could not intervene without doing more harm than good; but those in authority are more frequently and more strictly bound to correct their subjects and to defend their reputation against slander.

6. Inasmuch as detraction, calumny, and other sins of the like nature, are contrary to justice, they will always leave the obligation of making restitution as far as possible for the unjust damage which they cause, as we saw above when treating of restitution.

CHAPTER III

ON CONTUMELY

1. Our neighbor has a right not only to his good name but also to the honor or the external marks of our esteem, befitting his qualities and position. The Apostle exhorts us to love "one another with the charity of brotherhood, with honor preventing one another," [1] and in another place he bids us render honor to whom honor is due.[2] The sin of contumely is committed by any act or word which is contrary to the honor which we are bound to show our neighbor. It may be committed by neglecting to show him the honor which is his due, or by saying or doing something in his presence which expresses our contempt of him.

2. Contumely of itself is a grave sin against justice and charity, for it injures a man in what he values more than wealth, and as a rule an insult wounds the reputation, as well as the feelings of him who is insulted. Our Lord's words show how grievous a sin is committed by treating another with contumely: "Whosoever shall say to his brother, Raca, shall be in danger of the Council. And whosoever shall say, Thou fool, shall be in danger of hell fire." [3] Like most sins against justice and charity, contumely may be only a venial sin for levity of matter, and

[1] Rom. xii. 10. [2] Rom. xiii. 7. [3] Matt. v. 22.

chaff or banter, which is not intended to wound or irritate another, is of course harmless provided that it keeps within due bounds.

3. Inasmuch as contumely violates justice, proper satisfaction must be made for insults. The kind and manner of making satisfaction will depend much on the relative condition of the parties. Sometimes the person injured may be reasonably presumed not to wish the memory of the insult to be revived by formal apologies, and the danger of again arousing bitter and angry feelings may also excuse one from open acts of satisfaction.

CHAPTER IV

ON LYING

1. A LIE is defined by St. Thomas to be a speech contrary to one's mind.[1] It is then of the essence of a lie that there should be an intention of saying what is false, that there should be a contradiction between the mind and the external expression of it. One may tell a lie then by saying what is true if it is believed by the speaker not to be true, and a lie is told by denying what is false if it is believed to be true. Although a liar usually has the intention of deceiving others, yet such an intention is not of the essence of a lie. A man may be well aware that he has no chance of being able to deceive another, but may say what he knows to be untrue in order to excuse himself, or not to stand self-convicted. Men who are known to lie habitually do not expect others to be deceived by what they say, but still they lie when they say what is not true. One may lie to God, though he knows that he cannot deceive Him.

In saying that a lie is a speech contrary to one's mind we understand not only words but gestures, or any signs by which our thought is manifested to others. As St. Augustine says: "He tells a lie who has one thing in his mind and says something else by word or by any signs whatever." [2] For we may and do constantly speak not only by word of mouth, but by our tone, looks, gesture, actions, and

[1] Summa, 2–2, q. 110, a. 1. [2] De Mendacio, c. 3.

by the very circumstances in which our words are uttered. The words "I am not guilty" in the mouth of a murderer have quite a different meaning when they are uttered in the dock and at the feet of his confessor. The words, the tone, the look may be the same; the circumstances make it a true speech in the first case and a sacrilegious lie in the second.

A lie in action is called *hypocrisy* or *simulation*, but the malice is the same as in lying words.

Lies are divided by theologians into jocose, officious, and hurtful lies.

A jocose lie is told to amuse others; it is something said in joke which the speaker knows to be false, and uttered with the intention of saying what he knows to be false. If what is not true is said in joke without any intention of lying, and in such a way that ordinary hearers would understand, there is no lie. To speak ironically is not to lie.

An officious lie is a lie of excuse, or a falsehood which while procuring some advantage does nobody any harm.

A hurtful lie does an injury to some one.

2. According to the common Catholic teaching, lying of every kind is intrinsically wrong; so that, inasmuch as we may not do evil that good may come of it, we are never justified in telling a lie, not even if the life of another or the safety of the world depended on it. St. Augustine, St. Thomas, and other Catholic Doctors and theologians gather this doctrine from the teaching of Holy Scripture, which in many places seems to forbid all lying as absolutely as it forbids theft or homicide.[1] Pope Innocent III gives expression to this teaching when he says in the Decretals, "Since Holy Scripture prohibits lying even to save the life

[1] Col. iii. 9; Eph. iv. 25.

of another." [1] Reason teaches us the same doctrine. For a lie is something inordinate in itself. It is a perversion of the moral order which the law of nature prescribes should be observed between the mind and the expression of it in our intercourse with others. We are endowed with the faculty of making known our thoughts and feelings to others; right order requires that the external expression should agree with the internal thought, that the machinery should be correctly regulated, that there should be no contradiction between the parts of the same agent, as there is when a lie is told. The moral turpitude which there is in such a contradiction between the mind and its external expression is well seen in the vice of hypocrisy. When a man pretends to be other than he is, there is the same perversion of right order that there is in lying. It is like a monstrosity in nature; the parts of one whole do not fit harmoniously together; they are out of gear, and offensive to the view. There is then a special virtue of veracity which prescribes that when we have to make known our thoughts and feelings we should do it truthfully, or in other words we should make the outward expression agree with the thought. This virtue of veracity exists and is of obligation apart from any right to the truth that there may be in others. Veracity is something which we owe to ourselves as well as to our neighbor. It is true indeed that society is very much interested in sincerity and veracity. Social intercourse is very much hindered by lying and the mistrust which lying generates. But although this is true, yet lying must be avoided primarily because it is unworthy of the dignity of man; it is a perversion of right order; it is intrinsically, in itself, wrong.

[1] C. Super eo, De usuris.

Some of the Greek Fathers held a different view from the above, and thought that lying was not wrong under all circumstances, but that it was occasionally allowable, like medicine, on account of inevitable necessity. English moralists have very commonly held a similar opinion, that a lie is only told when what is false is said to one who has a right to the truth. Some modern Catholic theologians have also adopted this opinion, which places the malice of lying in the denial of the truth to one who has a right to it. They do not however sufficiently explain the nature of that right, whether it is a strict right of justice, or a right in a vague sense demanded by the good of society, and so due out of legal justice, or charity, or piety, or obedience. Moreover, it is as difficult to determine when that right exists as it is to determine what is a lie according to the common opinion, and the door seems to be opened to promiscuous lying provided that no injury be done to our neighbor. The only lie which the theory acknowledges seems to be the hurtful lie. Nor does it sufficiently answer the arguments on which the common opinion is based.

3. If it is never lawful to tell a lie, if the lie of necessity cannot be allowed, what means have we of safeguarding a secret?

Catholic theologians answer this question by propounding their doctrine of mental reservation. Mental reservations are either strictly or widely so called. The former is the restriction of one's meaning in making an assertion to the proposition as modified by some addition made to it within the mind of the speaker. As if on being asked "Are you going to town," one were to answer "Yes," meaning "in imagination." In wide mental reservations the words used are capable of being understood in different senses,

either because they are ambiguous in themselves, or because they have a special sense derived from the circumstances of time, place, or person in which they are spoken. Thus when a servant says that her master is not in, the words may mean either that he is absent, or that he does not wish to see the visitor. The servant's real meaning is restricted to one of these senses. In the same way a defendant on his trial in an English court of justice pleads not guilty, *i.e.*, until the charge be proved. A lawyer or a doctor questioned about professional secrets replies, "I don't know," *i.e.*, I have no knowledge which I can communicate.

Although strict mental reservations are lies, and therefore sinful, yet wide mental reservations are in common use; they are necessary, and they are not lies. They are necessary, because justice and charity require that secrets should be kept, and frequently there is no other way of keeping them. They are not lies, because, as we saw above, words take their meaning not only from their grammatical signification but from the circumstances in which they are used. When a priest is asked about a sin which a penitent has confessed to him, and he answers, "I never heard of it," he speaks as a man, not as a confessor who holds the place of God in the tribunal of Penance. All are aware that he is a priest, and to all his words mean, "I never heard of it outside of the confessional." He never speaks of what he has heard inside the confessional, and nothing can, or should, be gathered about what he has heard there from the words which he uses. Although these wide mental reservations are not lies, yet they must not be employed without just cause, for the good of society requires that we should speak our mind with frankness and sincerity in the sense in which we are understood by

our hearers, unless there be a good reason for permitting their self-deception when they take our words in a sense that we do not mean.

Truth requires not only that we should say nothing that we know to be false, but also that we should weigh our statements and not make rash and unconsidered assertions. There are some people whose talk runs babbling along like a stream in a fresh, and with as little meaning. A man with a love for truth will be more sparing of his words, and will weigh them before giving them currency.

CHAPTER V

ON SECRETS

1. A SECRET is some hidden matter concerning another which cannot be made known without causing him injury or displeasure. Besides the secret of the seal of confession, which is treated of elsewhere, divines distinguish three kinds of secret: the natural secret, the promised secret, and the secret which is communicated under an express or implied contract of secrecy.

When we come to the knowledge of something concerning another which cannot be made known without causing him injury or displeasure we are under the obligation of a natural secret not to make it known. This obligation arises from charity and justice, inasmuch as these virtues forbid us to do anything to the hurt or annoyance of our neighbor.

If we come to know something concerning our neighbor and then give a promise not to reveal it to others, we are bound by a promised secret. If the matter was of its nature secret, there would be the obligation of a natural secret independently of the promise. When the promise is given, a special obligation arising therefrom binds the party to secrecy. In case the matter was not of itself secret, the only obligation would be that arising from the promise. It depends to some extent on the intention of the promisor as to what obligation he takes

upon himself by his promise. He may intend to bind himself to keep his word by the virtue of fidelity, because it is the duty of an honest man to keep his promise. In this case, as fidelity only binds under pain of venial sin, there will only be this obligation to observe the promised secret. However, if the other party to whom secrecy was promised would suffer serious loss from the violation of the secret, or if the parties were bound by mutual promises, then justice would require the secret to be kept, and the violation of the obligation would of itself be gravely sinful. Apart even from these circumstances, the promisor may intend to give the other a right to secrecy in justice, and then he will be bound to observe it under pain of mortal sin.

A secret which is confided to another under the condition that secrecy is to be observed, constitutes the matter of an onerous contract and binds more strictly than either a natural or a promised secret. Such are secrets of office which officials of all sorts become aware of in the execution of the duties entrusted to them; professional secrets of doctors, lawyers, priests, and others, who are consulted as experts by people in doubt or difficulty; as well as all others which are entrusted to any person under the express or implied condition of secrecy.

2. The obligation to observe a natural secret will cease after the secret has become public property. The party whose secret it is may sometimes be reasonably presumed not to be unwilling that the matter should be communicated to another, as, for example, to somebody who can and who will be of assistance to him. If the public good requires that the secret should be made known in order to prevent public wrong, the obligation of secrecy will cease, for the public welfare is of greater importance than that of an

individual. If serious harm threatens one's self or some other innocent person, or the party whose secret is in question, and the harm can only be averted by making known the secret, this will be allowed in the case of natural or promised secrets. The right of defence from impending evil prevails over that of natural and promised secrets.

Even the obligation of the third class of secrets will cease when they cannot be observed without serious harm to the public weal. The natural law, however, which requires that people should be able to consult others in their difficulties in all security, demands that this class of secret should be observed in the case when even serious harm threatens some innocent person, unless he whose secret is in question is the cause of the impending evil. Thus if I know as a professional secret who is the real culprit in the case of a crime wrongly imputed to an innocent person I may disclose the real culprit if by some special means he caused the false accusation of the innocent person, otherwise I must keep the secret. It is a disputed point among theologians whether I am bound to observe a secret at the peril of my life when it was entrusted to me under that express condition, some maintaining that no one can pledge his life in that way, others more probably holding the contrary. Whether or not I am bound at my own serious loss to keep a secret entrusted to me under the condition of secrecy depends to some extent on circumstances. Sometimes I cannot be supposed under the circumstances to have bound myself by so strict an obligation; but as a rule professional secrets will continue to be binding even when the observance of them entails serious loss.

3. We are bound to make known natural and promised secrets at the command of lawful superiors. The obliga-

tion of obedience to lawful authority prevails over that of secrecy due to individuals in those cases. And so a witness in a court of justice when lawfully questioned about what he knows under the obligation of natural or promised secrecy must give the evidence required. Similarly secret impediments to marriage must be declared according to the precept contained in the proclamation of banns. Professional secrets, however, and in general, secrets which belong to the third class, are privileged, and must not be declared, unless they have ceased to be binding for some such reason as those mentioned above. Secrecy in this case is demanded by the natural law, which gives the fullest possible security to those who consult others in their difficulties, and even the precept of one's superior cannot avail against the natural law, as St. Thomas teaches.[1]

English law acknowledges the privilege of state secrets and of the professional secrets of lawyers, but in the case of doctors and clergymen it does not as yet go the full length of the doctrine laid down above.

4. The doctrine with regard to secrets is applicable to the opening and reading of letters, unless it is known that they contain no secrets and the writer is not aggrieved. It is, however, a general rule of religious orders that letters written by and to religious may be opened by the superior, except such as contain matters of conscience, and communications between higher superiors and their subjects.

[1] Summa, 2–2, q. 70, a. 1, ad 2.

BOOK VII

ON CONTRACTS

PART I

ON CONTRACTS IN GENERAL

CHAPTER I

THE NATURE OF CONTRACT

1. RIGHTS may be acquired by one person from another when the latter voluntarily surrenders them in favor of him by whom they are freely accepted. This is done by contract, which may be defined as an agreement by which one or more persons bind themselves to do, give, or forbear something in favor of one or more other persons.

Contracts are express or implied. Express contracts are entered into by word of mouth or by writing. Implied contracts are formed by the virtual or implied consent of the parties. Thus whenever a person undertakes an office he virtually agrees to perform all the duties annexed to it by law, or custom, or which the nature of it demands. These latter are also called quasi-contracts.

By a unilateral contract one only of the parties becomes subject to an obligation, as by a simple promise to do something in favor of another. A bilateral contract, such as that of sale, imposes an obligation on both parties.

A gratuitous contract confers advantage on one of the parties only, though both may incur an obligation by it. An onerous contract confers advantage on both parties. Thus if I lend my horse to a neighbor for the day he alone derives advantage from the contract, though I am bound not to demand the horse back until the appointed time arrives. If the contract is one of hiring, both parties derive advantage from it, and both are laid under obligations by it.

A consensual contract is formed by the mere consent of the parties, a real contract by the delivery of the object of the agreement.

A solemn or formal contract is entered into with the formalities required by law. A simple contract has no such formalities. In English law some simple contracts give no right of action unless they are in writing, or unless they have some other adjunct which serves as evidence of the contract. Thus by the Sale of Goods Act, 1893, s. 4, "a contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf." In these cases the law does not annul the contract if it is destitute of the legal requirements, or make it voidable; it only renders it unenforceable in the courts of law. The only formal or specialty contract in English law is the deed. A deed is a document in writing or printed on paper or parchment. It is executed or made conclusive between the parties by being signed, sealed, and delivered.

The seal is often affixed to the deed beforehand and this is executed and made operative by the party whose deed it is placing his finger on the seal and saying, "I deliver this as my act and deed." [1]

2. In moral theology we have chiefly in view the natural obligation in conscience which arises from every true contract to act in accordance with the agreement entered into. That obligation is one of justice, for a contract gives a strict right in justice to the fulfilment of the agreement. We cannot, however, afford to neglect positive law, ecclesiastical and civil, especially in the matter of contracts. It is a received axiom that contracts are governed by the law of the country. So that a question for consideration arises here, whether positive laws, which require certain contracts to have a special form for their validity, bind the conscience, so that if they are informal they are null and void in conscience as they are in law.

No difficulty exists with regard to contracts which are governed by ecclesiastical law. The effect of the Tridentine law, which makes marriage null and void if not contracted in presence of the parish priest and of two witnesses, is clear from its terms. The same is true of other ecclesiastical laws which annul contracts. A difficulty arises only with regard to civil law, which does not usually explain whether defect of form in specialty contracts merely affects the legal obligation, or whether it affects also the natural obligation, making the contract null and void in conscience, so that no rights or obligations of any kind arise under it.

The civil authority can certainly make laws which would have that effect in its own department, as all admit. It is a question of fact as to what is the effect of such voiding

[1] Anson, Law of Contract, p. 51.

laws in any particular system of jurisprudence. It is a well-established opinion among English moralists that English laws which make acts void for want of legal form do not absolutely and at once annul the act, but only make it voidable.[1] So that defect of form in deeds and testaments will not prevent them from taking effect according to the intention of him who made them. If, however, it be the interest of some one to have the informal act set aside, he may use the benefit which the law gives and set it aside, provided that there is no fraud. Modern theologians commonly hold this opinion concerning the effect of voiding laws in other modern systems of legislation.

3. From the definition of contract it is clear that its essential elements are: 1. the consent of the parties; 2. parties who are capable of giving a valid consent; 3. the subject-matter of the agreement. These will form the subject of the three following chapters.

[1] Jeremy Taylor, Ductor dubit, bk. 2, c. 1, r. 5, n. 22.

CHAPTER II

ON CONSENT

1. The consent of the parties is the efficient and formal cause of a contract. When the two wills meet together and agree on the matter of the contract, the contract is formed. In order to produce its effect this consent must have certain qualities; it must be deliberate and free, mutual, internal as well as external.

It must be deliberate, for a contract imposes a perfect and serious obligation on the parties, an obligation which they voluntarily take upon themselves, and which is not imposed from without. Now such an obligation cannot arise from a semi-deliberate act; full and perfect deliberation is required to give rise to a full and perfect obligation which is voluntarily undertaken.

It must be free, not unjustly forced; for an obligation which binds in justice cannot arise from injustice.

It must be mutual, for a contract is the agreement of two wills. It is not necessary that consent be given at the same time by both parties. Provided that one of them has consented previously and his consent still endures, the contract will be formed when the other party gives his consent, for then there will be the agreement of the two wills.

It must be internal, for a contract is an agreement of

wills; one renounces a right in favor of the other who accepts it, and this requires an internal act of the will. If the internal act be wanting, we may have a seeming contract, a contract in appearance, a fictitious but not a real contract. Inasmuch as a fictitious contract is no contract at all, it cannot as a contract bind the conscience, and so one who enters into a contract without intending to bind himself is not bound by it. He is, however, guilty of deception and fraud, and on this ground he is bound to indemnify the other party for any damage that he has caused him by his sinful and unjust action; and if the only means of doing this is for him to fulfil the terms of the contract, he will be bound in justice to do that. When a contract is entered into without the intention of fulfilling its obligations, there is no contradiction here as in the former case; the contract exists, and its obligations must be faithfully executed.

Internal consent is not sufficient of itself to form a contract; it must also be outwardly manifested to the other party in order that he may know that his offer has been accepted and that there is mutual agreement. In other words, the consent must be external as well as internal. This internal and external agreement of the parties to a contract is brought about by an offer being made by one of them and accepted by the other. As soon as acceptance is externally manifested, all the requisites for a contract are present, and it forthwith springs into existence, even though the offeror does not yet know of the acceptance of the offeree. English law accepts this doctrine so far as to decide that "if acceptance through the post is expressly or by implication prescribed or permitted by the offeror, acceptance is made, and the contract is concluded, at the

moment when an acceptance is duly posted for transmission to the offeror, even though the acceptance is delayed or lost in the post." [1] Ordinarily, however, acceptance is not complete until it is communicated to the offeror.[2]

2. Mistake concerning what was principally intended in the contract is said to be substantial, and it renders the contract null and void, for there is then no agreement of wills in the same matter. Thus if one of the parties thinks that the contract is one of hiring, while the other thinks it is a sale, the mistake is substantial, and there is no contract. Similarly, mistake about the matter of the contract is substantial, and vitiates it, as if one thinks he is buying gold, while the other knows that it is brass. Mere ignorance as to what the object was would not make the contract invalid. Again, if one of the parties makes his consent conditional on some definite point, there will be no consent and no contract if the condition is not verified. Mistake concerning the other party to the contract is as a rule not substantial, and does not vitiate the contract. In marriage, however, and in gratuitous contracts in favor of a certain person for purely personal reasons, mistake about the person of the other party is substantial. Even in onerous contracts mistake about the person with whom the contract is made may be substantial in special circumstances, when for particular reasons the consent is given only to a definite person.

3. Mistake about what is accessory and accidental in a contract does not invalidate it, for there is agreement about what is substantial and essential. Even if the party would not have entered into the contract if he had not been under a mistake about some matter which is accidental

[1] Digest of English Civil Law, n. 198. [2] Ibid. n. 196.

to it and not substantial, still the contract is valid, for, in fact, he gave his consent; unless, of course, he only gave consent conditionally, on some supposition which was not verified.

4. If, however, one of the parties was induced to give his consent by the fraud or misrepresentation of the other, and he would not otherwise have entered into the contract, the contract is voidable at the option of him who was deceived. The law of nature seems to indicate this as a suitable means of repairing the injury done by the fraud, and it is confirmed by English civil law.

Even if there be no fraud or misrepresentation but only non-disclosure of facts which it was of importance for the other party to know, this will suffice to enable the party who had a right to full knowledge to avoid contracts of marine, fire, and life insurance, for the sale of land, for family settlements, and for the allotment of shares in companies. Such contracts are in English law said to be *uberrimæ fidei*.

5. A contract is also voidable at the option of one of the parties who has entered into it under duress, *i.e.*, actual or threatened violence affecting the contracting party, or his wife, parent, or child, and inflicted by the other party to the contract, or by some one acting with his knowledge and for his advantage. Fear caused in other ways does not invalidate the contract or make it voidable, unless it was so great as to deprive the contracting party of the use of reason. When one of the parties stands to the other in the relation of parent, guardian, trustee, medical attendant, legal adviser, spiritual director, or the like, any contract between them by which the one in authority obtains benefit or advantage may, according to English law, be set

aside by the other on the ground of undue influence, unless it can be shown that the transaction was fair. The burden of proving this rests on the superior, who will seldom be successful unless he can show that the other had access at least to independent advice.

CHAPTER III

CAPACITY OF PARTIES

1. By the law of nature all persons who have the full use of reason are capable of entering into contracts. On the other hand, children who have not yet attained the full use of reason, persons of unsound mind, and those who are drunk, cannot make valid contracts. We must, however, take into account the provisions of positive law which affect contractual capacity.

2. Religious who are professed of solemn vows, and are consequently incapable of holding property personally, cannot personally acquire property rights or liabilities under contract. Religious who are under simple vows are capable of holding property, and they can make valid contracts with reference to it; but they do not act lawfully without the permission of their superiors. In other matters, also, religious are dependent on the will of their superiors, and cannot lawfully undertake contractual obligations without their permission. If they do so, the contracts may be avoided by the superior, except as regards the acquired rights of third parties.

3. A married woman is now by the Married Women's Property Acts, 1882 and 1893, in the same position as a single woman as regards the acquisition and disposal of property, and the acquisition of rights and liabilities in

contract. Still, she is not personally liable in respect of contract nor for fraud committed in connection with contract. Her liability can only be enforced against her property. She cannot be made a bankrupt, unless she is carrying on a trade apart from her husband.[1]

4. A minor can enter into a binding contract which is for his advantage, as, for example, an apprenticeship; he can also make a valid contract to pay a reasonable price for necessaries, or for goods and services which are suitable to his position and which are actually required for his reasonable comfort. Other contracts entered into by minors are void in law and voidable in conscience, and no ratification of them after full age has been attained is enforceable, whether there be a new consideration for them or not. Of course, a minor cannot abuse the privilege which the law gives him in order to cheat and defraud others; if he has obtained a benefit even by contracts which are void by English law, he must pay a just price for it, and even English law will not enable him to recover money paid by him under such contracts if he has received benefit under them.[2]

5. Convicts under sentence of death, or undergoing penal servitude for crime committed, have no legal capacity, and cannot enter into a contract which English law will recognize. Any property belonging to such a convict is administered in accordance with the provisions of the Forfeiture Act, 1870, by an administrator appointed by the court.

6. The unilateral acts of a person of unsound mind are by English law void, unless they were done during a lucid interval. His contracts other than marriage are valid,

[1] Digest of English Civil Law, n. 71. [2] Digest, n. 54.

unless it can be shown that the other party to the transaction was aware of the unsoundness of mind. In that case they are voidable at the option of the person of unsound mind, or his representatives. The same rules hold good of the contracts of drunkards in English law.

7. Corporations or artificial persons are *per se* capable of entering into contracts through their agents in much the same way as natural persons. Those, however, that are created under the authority of English law by statute, or are formed under general statutes such as the Companies Acts, for definite purposes, are held incapable of binding themselves for objects clearly beyond those purposes as declared in the company's constitution.[1]

[1] Encyclopedia of Laws, *s.v.* Contract.

CHAPTER IV

THE MATTER OF CONTRACT

1. The subject-matter of a contract must be something that is possible, for there can be no obligation to do what is impossible. Mere inability, however, to perform what one promised must not be confounded with impossibility. If the performance of a contract is contrary to the course of nature, it is void. No one can bind himself by contract to visit, and report on, the other side of the moon.

If at the time of concluding the contract the performance of it was impossible in fact, it is not void unless the parties contracted conditionally upon performance being possible in fact. The contract also remains valid if it was possible at the time of concluding it, but subsequently it becomes impossible without fault of either party, unless the parties intended that the contract should cease to be binding if performance became impossible. This intention is presumed when the possibility of performance was known by the parties to depend upon the continued existence of some thing, condition, or state of things, which has ceased to exist, and when the performance becomes impossible by reason of the death or illness of one of the parties, in the case of an agreement relating to personal services to be rendered by that party.[1]

[1] Digest, n. 294 ff.

When the performance of a contract is or becomes in part possible and in part impossible it is a question of intention, depending in each case on usage and construction, whether the partial impossibility avoids or discharges the contract.

2. The matter of a contract must either exist or there must at least be some probability of its future existence when the contract is entered into, otherwise there is nothing of value and no right to transfer, and a necessary condition for a contract to come into existence is wanting.

3. The matter must be determinate or capable at least of being determined, otherwise the terms of the contract will be too vague, and no agreement of wills on the same matter is possible.

4. The matter must be something of which the contracting party has the disposal, or of which he will have the disposal when the contract has to be executed, for he cannot transfer to another what he cannot dispose of. When an object is already due to another in justice, its transfer to him cannot form the matter of a new contract, and so if a judge sells justice to a litigant he is bound to restore the bribe to which he has no title. One may, however, enter into a contract with a third person to do what is already owing in justice to some one else, provided that both obtain their full rights. A doctor, for example, may charge next-door neighbors the full fee for a visit to each, though he has only the trouble and expense of one journey. Similarly what is already due, not in justice but out of charity or some other virtue, may form the matter of contract.

5. There can be no obligation to do what is wrong, and so the matter of a contract must be something which is lawful and honest. It is obvious that a contract to do

what is forbidden by the moral law is invalid. If, however, such a contract has been executed and the crime committed by one of the parties, the question arises whether he has a right to the money or other compensation which was promised, and which, as we suppose, may be received without sin. There are two opinions about this question. Some theologians hold that no such right can exist, for the contract was invalid from the beginning, and remains so; mere lapse of time cannot make it valid. On the other hand, many great authorities maintain that the actual doing of the sinful action in favor of one party to whom it is agreeable, and to whom it affords advantage of some sort, is the concluding of an innominate contract, and gives the party who did it a claim in justice to the compensation promised. Both views are probable, and so after the sin has been committed, and consideration for it has been paid, there will be no obligation to make restitution.

Sometimes the Church forbids a contract under pain of sin only, and then such contract will be unlawful but valid, as is a mixed marriage without the requisite dispensation; sometimes she forbids a contract and also invalidates it, as she does clandestine marriages.

There are some contracts which are illegal in English law, and yet they are valid in common estimation. This is the case with betting, and so if the contract is valid according to the law of nature, it will be obligatory in conscience, though unenforceable by English law. Other illegal contracts which are forbidden by the civil law of England are not thereby made invalid in conscience if they are valid by the law of nature. The law merely affects the external legality of the contract which it refuses to enforce. If, however, one who has entered into such a

contract wishes for good reason to avoid it, and acts without fraud or injustice to the other party, he may take advantage of the law and rescind his contract. This doctrine is in keeping with what has already been said in similar questions concerning the effect of civil law and with the views of modern theologians on the subject.

CHAPTER V

CONSIDERATION, AND THE EFFECTS OF CONTRACT

1. By English law no simple contract is binding upon a party unless he receives consideration for his promise. The promisor is said to receive consideration for his promise when the promisee does, forbears, or suffers, or promises to do, forbear, or suffer, something in exchange for, and at the time of, the promise made to him.

Inasmuch as the intrinsic reason and motive for entering into a contract is an essential element of it, and a condition *sine qua non* of its existence, to this extent we may say that consideration is necessary for the validity of a contract by the law of nature. Thus if I give an alms to a beggar merely because he represents himself to be destitute, he will have no right to the alms if he is not destitute but well off. Again, if I buy a horse for running in a carriage, and the animal which I obtain is quite useless for my purpose, the contract is null and void. However, the English doctrine of consideration is different from this. In English law consideration must be something of value, not necessarily of equal or adequate value, but there must be a *quid pro quo;* a merely good consideration, as pity, gratitude, or relationship, will not be sufficient. If a simple contract has no such valuable consideration, it has no binding force. However, want of valuable considera-

tion will not make a contract null and void in conscience; it will be valid in conscience if it has all the elements required by the law of nature, and in consequence it will be obligatory in the forum of conscience. It will merely be unenforceable in English courts of law.

2. The primary effect of a contract is to impose an obligation on the parties which binds them in justice to fulfil the contract. If one party fails to do so, the other will have a right to be compensated for the loss that he has suffered.

The extent and quality of the obligation imposed by a contract will depend on the intention of the parties, which may be gathered not only from the express terms used by them, but also from the law, from custom, usage, and the character of the parties.

Only the parties who entered into the contract are bound by it. They may agree together to confer a benefit on some third person; the latter will then receive advantage from the contract, but his rights and liabilities will not be affected by it.

3. It used to be a common practice to confirm an agreement by oath, and the older theologians have much to say on the questions which arise from such a practice. It is now seldom done, and the matter may be treated briefly.

If an oath is added to a valid contract, besides the obligation of justice, a fresh obligation is added which binds the party out of reverence for his oath to fulfil his engagement. Inasmuch as the oath is accessory, and what is accessory follows the nature of the principal, the obligation arising from the oath will receive its interpretation from, and will cease with, the obligation of the contract. By Roman law, whose provisions were adopted by the canon

law, the contracts of minors and certain other contracts which were of themselves rescindable, became irrescindable when they were confirmed by oath. This, however, was an effect of positive law, which has no counterpart in English jurisprudence.

4. The obligation of a contract may, according to the intention of the parties, depend on whether a certain event has happened or will happen in the future. The contract is then conditional, not absolute. If the event is past or present, but it is not known by the parties whether it has happened or not, the contract at once is valid or not, according as the condition is fulfilled or not, but the parties will not know whether they are bound by the contract until they know whether the condition be fulfilled or not.

When the event is future, and its happening will, according to the intention of the parties, discharge the parties from obligation under the contract, the condition is subsequent. The parties are bound by the contract and will continue to be so bound, unless and until the subsequent condition is verified.

When the parties agree that the contract shall depend upon the happening of a future event, there is a condition precedent. An obligation at once arises from such an agreement of awaiting the event; when it has taken place the contract becomes absolute and begins to bind without any fresh act of the contracting parties; if the event does not take place, the obligation is discharged.

5. Sometimes on entering into a contract something is given as earnest, which serves as evidence that the contract has been concluded, or as security that it shall be performed. Unless there is a contrary agreement between the parties, the earnest will be treated as part payment,

or will be returned upon performance; it will be forfeited if the party who gave it fails to perform; it will be returned if the party who received it fails to perform.

If it is agreed that a certain sum is to be paid in the event of breach of contract by the party who was in default, the whole sum will be due if it represents liquidated damages. If, on the contrary, it is a penalty, the injured party, according to English law, cannot recover more than the amount of the loss actually suffered by him.[1]

[1] Digest, n. 313.

CHAPTER VI

DISCHARGE OF CONTRACT

The obligation arising from a contract may cease to exist in several ways:

1. By mutual agreement, by which each party renounces his rights under the contract. Cessation of contract by merger of one in another, or by substitution of one for another, may be classed under this head.

2. A contract ceases by performance when each party has wholly performed his duty under it.

3. When a contract consists of reciprocal promises, and one party fails to perform, or clearly expresses an intention not to perform, or disables himself from performing his promise, the other party may, at his option, treat the contract as at an end and it is thereby discharged. Failing this, the injured party continues liable to perform his part, but he may claim damages for breach of contract by the other.

4. A contract which has for its object the rendering of a personal service is discharged by the death or incapacitating illness of the promisor.

5. There is no prescription against the obligation of a contract in English law, but a trustee in bankruptcy may repudiate the contracts of the bankrupt, if they appear to be unprofitable.

Part II

ON SPECIAL CONTRACTS

CHAPTER I

ON PROMISES

1. A SIMPLE promise is a unilateral and gratuitous contract by which the promisor binds himself to do something for another.

English law will not enforce a simple promise for which no valuable consideration was given and which was not entered into by deed. In truth a simple promise is hardly considered to be a contract, inasmuch as this term is confined to such agreements as the law will enforce. However, in the forum of conscience a simple promise begets an obligation to fulfil it, for an honest man is faithful to his promises.

The mere expression of an intention or of a purpose to do something must be distinguished from a true promise. No new obligation is created by the former, whereas a promise imposes on the promisor a new obligation. This obligation arises from his intention to bind himself by his promise which must be made known to, and accepted by, the promisee. Until acceptance there is merely an offer, which may be revoked at will by the offeror; when the offer is accepted the promise becomes a binding contract.

2. There is a dispute among theologians concerning the kind and quality of the obligation imposed by a simple promise. An onerous promise for which consideration is given by the other party and mutual promises bind in justice, and consequently under pain of grievous sin in serious matter. Similarly, where the promisee has been led to rely on a promise, and would suffer serious loss unless the promise were fulfilled, the promisor will be under a grave obligation to fulfil it. Apart from these circumstances the obligation of a simple promise will depend on the intention of the promisor. If he intended to give the promisee a strict right to what was promised he will be bound in justice; otherwise he will only be bound by the virtue of fidelity, which is a self-regarding virtue, and imposes an obligation to make the fact agree with one's word. The virtue of fidelity of itself only binds under pain of venial sin.

3. A promise will cease to bind if some event takes place or becomes known subsequently which would have prevented the promisor from making the promise if it had happened or been known beforehand. For a simple promise is essentially conditional; the promisor binds himself to do something under certain suppositions and in certain circumstances; if those suppositions are not verified, or if the circumstances become changed, the obligation of the promise ceases. All the more will a promise cease to bind if what was promised becomes unlawful and wrong, or useless, or impossible. It is obvious that release by the promisee, and other causes, which are sufficient to discharge contracts according to what was said above, will also suffice to do away with the obligation of a promise.

CHAPTER II

ON GIFTS

1. A GIFT is a unilateral contract by which property is gratuitously transferred to another. It differs from a promise in that it takes effect at once, while a promise regards the future, and from such contracts as sale and exchange in that it is gratuitous. A gift *inter vivos* is distinguished from a gift *mortis causa* in that the latter is made in contemplation of death, and becomes irrevocable only if death follows. If death does not ensue a gift *mortis causa* is thereupon revoked. A gift *inter vivos* was revocable by Roman law on account of ingratitude and for certain other reasons; by English law such a gift is irrevocable.

2. By the law of nature any property may be transferred to another by gift provided that the donor is capable of making a valid gift, and it is accepted by the donee. Positive law requires other conditions to be fulfilled in order that a gift may be recognized and enforced in the civil courts. Thus English law requires a gift of chattels to be completed by actual delivery unless it is made by deed. Certain kinds of property can only be given by deed. These and similar provisions do not invalidate a gift which is made without the formalities required by law, but if a

gift is disputed, and the authority of the law is invoked, both parties must stand by the decision of the Court. A gift to pious causes is governed by ecclesiastical law, which requires for its validity nothing more than what is necessary by the law of nature.

CHAPTER III

ON WILLS

1. A WILL is a legal declaration of a person's intentions which is to take effect after his death. In English law a will is not necessarily a disposition of property; the appointment of a guardian for one's children, or of an executor who will distribute the estate according to law, is a will if accompanied by the proper legal formalities. Ordinarily indeed a will is a disposition of property, but it frequently contains other provisions as well, as to the place of one's burial, and other matters.

A will is not strictly speaking a contract, for the consent of the beneficiaries under it is not required for its validity, but it partakes of the nature of a unilateral contract, and is usually treated as such by theologians.

Lawyers and theologians are by no means agreed as to the source whence a will derives its effect. Some hold that the power of testamentary disposition is derived from the law of nature, inasmuch as there is nothing to prevent a man from doing some act and at the same time suspending its effect until after his death. Others maintain that the will of a person cannot produce its effect when that person is already dead; no disposition of property can be made by a human will that has ceased to act as far as outward manifestation is concerned. Nor does a will produce its

effect until the testator be dead. They conclude then that the power of testamentary disposition is derived from positive law. We may, perhaps, hold as certain that the law of nature gives owners of property the right to dispose of it in some way in view of death, but that it does not determine of itself the method of disposition by will. This precise method is a result of the determination of the natural by positive law.

2. To be valid in English law a will must be made according to the provisions of the Wills Act (1 Vict. c. 26, s. 9), which enacted "that no will shall be valid unless it shall be in writing and . . . signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made, or acknowledged, by the testator in the presence of two or more witnesses, present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

NOTE. — The requirements for a valid will are not the same in all the States. Some admit holographic wills, *i.e.*, written by the testator in person without the formality of attestation, when proof is adduced that they were written by the testator. Such is the case in Arkansas, California, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Texas, Virginia, and West Virginia. Nuncupative wills, *i.e.*, testamentary declarations made in the presence of witnesses without any writing of testator, are valid in many of the States for others besides soldiers and mariners in actual service, but with widely varying conditions. In regard to the position of the signature of

testator, most of the States do not require, as in English law, that his name be signed at the end of the document; it is sufficient for it to appear at the beginning or end thereof. The form of attestation varies also in the different States. When real estate is devised, some States, *e.g.*, Connecticut, Georgia, Maine, and Massachusetts, require three witnesses, the great majority, however, being satisfied with two. In most of the States it is required that the witnesses know that the testator signed the document as his last will, while twelve of the States, Alabama, Connecticut, Georgia, Indiana, Iowa, Maine, Maryland, Minnesota, Pennsylvania, South Carolina, Virginia, and Wisconsin, in accord with the English law, do not require the witnesses to know the character of the document they are attesting. In a few only of the States it is required that the witnesses should subscribe their names in presence of each other. No date or place of making the will is *per se* necessary to be mentioned, but the absence of both or either may lead to its rejection. — End of Note.

By section 11 of the same act an exception to the rule that a will must be in writing is allowed in the case of any soldier, being in actual military service, or any mariner or seaman, being at sea. These may make a valid nuncupative will of their personal estate by word of mouth, even if they be minors.

We saw above that it is a disputed point among theologians whether an informal will is valid in the internal forum of conscience though it be invalid in law. Probably it is valid if it express the intentions of the testator, until a party interested moves to have it set aside. All parties must stand by the decision of the court.

A codicil, according to the terminology of modern English law, is a testamentary instrument altering or modifying a will. It requires for its validity the same formalities as does a will, and it may take effect without a will, if no will be forthcoming. A codicil to a particular will, or which refers to the provisions of the will, republishes the will and makes it speak as of the date of the codicil. But a testamentary instrument which is not described as a codicil to a will, and does not refer to a will, has not the effect of republishing the will.

A legacy is a gift in the form of a direction by testamentary instrument that the legal personal representative of the testator shall pay, transfer, or provide some money or thing to the recipient or legatee. The legatee derives his legacy from the executor, not immediately from the testator.

Any one may be a legatee. A legacy bequeathed to a creditor of the testator is presumed to be in payment of the testator's debt, but the courts look with disfavor on this doctrine, and are quick to discover reasons for setting it aside. A legacy to an infant may be paid to him if the testator so direct; otherwise the legacy must be retained until the infant attains the age of twenty-one, or paid to his testamentary guardian, or paid into court.

A legacy may be given on condition, either precedent or subsequent. Conditions against change of religion are valid in English law.

A legacy may fail from invalidity of the instrument conferring it, from uncertainty or vagueness of the terms of the bequest, or uncertainty of the person designated; from insolvency of the testator's estate; from the testator having disposed of the object in his lifetime if the legacy

be specific; or from his having paid the legacy in his lifetime; and from the non-fulfilment of a condition on which the legacy was given. The legacy also lapses on the death of the legatee in the testator's lifetime.

If a legatee has been paid, and the estate subsequently proves to be insufficient either from the discovery of further debts or the loss of assets, he may be compelled to refund his legacy in favor of creditors, and similarly a residuary legatee may be compelled to refund in favor of general legatees.

Legacies ordinarily become due on the death of the testator, but they are not payable for a year, that period being allowed executors in order to collect the assets and to pay the debts.

To secure the safety of trusts and bequests to Catholic objects, attention must be paid to various provisions of English law. The rule against perpetuities is designed to prevent property from being tied up permanently, and to obtain this end it requires that every use or trust must be so limited as necessarily to vest within a life or lives in being and a further period of twenty-one years. A tolerably large class of objects technically called "charitable" has however been exempted from this rule. Among these objects are the promotion of any form of lawful religion, the relief of the aged and poor, the maintenance of the sick, the establishment of free schools, and others of a similar kind. Such trusts and bequests as English law considers to be "charitable" are therefore upheld though they may infringe the rule against perpetuities. On the other hand, bequests for prayers and Masses for the dead are void as being bequests for "superstitious uses." Trusts and bequests for the benefit of religious communities of

men "bound by monastic or religious vows" are also void, as such communities are illegal in England. The Irish courts hold bequests for Masses to be for "pious uses" and not void, but subject to the rule against perpetuities as not being "charitable" in the technical sense. Trusts and bequests of land or of money to be laid out on the purchase of land are also subject to the Mortmain Acts.

NOTE. — While in every part of the United States bequests may be made for charitable purposes, there are some States where the statutes place restrictions, as Woerner points out in the following words: "The testator, if he leave a wife, or children, or parent, is permitted to will no more than one-fourth part of his estate, after the payment of his debts, for charities of any kind, in Iowa, and formerly in New York; one-third part in California, Georgia, and Montana; and one-half now in New York and Wisconsin. So in Louisiana, no church, corporation, or minister of the Gospel, for himself or the benefit of a church or corporation, can accept a bequest made in *articulo mortis;* in Maryland no devise or bequest made to any minister, public teacher, or religious sect or denomination, as such respectively, is allowed without sanction of the legislature; in Ohio, no gift for a benevolent, religious, educational, or charitable end is valid unless the will was executed at least one year before the testator's death; in Georgia it must be executed ninety days, in Michigan and New York two months, in Wisconsin three months, and in California and Pennsylvania respectively thirty days and one month before the testator's death."

As regards bequests for Masses there is no State in the Union where, as in England, they are held to be for "super-

stitious uses"; however, they have sometimes been declared invalid: Thus it was decided in New York and in the Wisconsin Court of Appeals that bequests for the soul of the testator and other deceased persons were invalid because the beneficiaries (the deceased) could not demand the execution of the trust. On the other hand the Supreme Court of Kansas decided that a bequest to a priest for Masses to be celebrated for testator and another was valid, being considered as a gift to the priest with an injunction to have Masses said. In Illinois and Massachusetts bequests for Masses were also sustained. — END OF NOTE.

These legal provisions do not bind the conscience with regard to legacies left to Catholic pious causes, nor is a Catholic justified in invoking them to make a pious legacy void for his own gain, but they should be known so that property left for Catholic purposes may be expended in accordance with the will and intention of the testator, or donor.

Wills and bequests for pious purposes among Catholics are governed by canon law, which requires nothing more than certain proof of the intention of the testator in order to make a testamentary disposition of property valid. It follows from this that bequests to pious causes contained in an informal will are valid, if there is morally certain evidence that it was the intention of the testator to make them. This doctrine has been frequently confirmed by answers of the Roman Congregations to questions proposed to them.

3. Those who have not yet attained the use of reason and persons of unsound mind are incapable of making a will by the law of nature. Religious who are solemnly

professed are incapable of making a valid will by the law of the Church. Minors under the age of twenty-one cannot make a valid will according to English law.

NOTE. — Regarding the age required to make a will, the statutes of the various States are not uniform. Thus in Delaware, Indiana, Kentucky, Maine, Mississippi, New Hampshire, North Carolina, Oregon, and Pennsylvania twenty-one years of age for male and female are required to dispose of real or personal property. Some States require twenty-one in either sex to devise real, and eighteen to bequeath personal property, as in Alabama, Arkansas, etc.; while Illinois, Iowa, and Kansas require twenty-one for males and eighteen for females to will real or personal property. Some States permit real or personal property to be willed by either sex at eighteen. In Florida, South Carolina, and Tennessee personal property can be bequeathed by male and female at twelve and fourteen respectively, which is the common law; and in the last-named State (Tennessee) real property follows the same rule. — END OF NOTE.

A will that has been made under duress and undue influence will be set aside if appeal be made to English courts. Women married after December 31, 1882, can by will or otherwise dispose of their separate property whether real or personal, and women married before that date can by the Married Women's Property Act, 1882, dispose in the same manner of all property which accrues to them after that date.

NOTE. — In many of the States married women have the same testamentary rights in real and personal property as if they were unmarried. In a few, however, they are

restricted to a disposal by will of only half their property; while in some others the husband retains the right by curtesy as the wife retains her right of dower. — End of Note.

4. A person who is capable of making a will may bequeath his property, both real and personal, to whomsoever he wishes; the legitim or reasonable part is not recognized by modern English law. This of course does not do away with the moral obligation of providing for those who have claims on the testator by reason of kindred or other ties. Still, for just cause, the testator may take advantage of the law, and leave nothing to one who otherwise would have been benefited under his will.

If a person dies intestate, his property will be distributed among his next of kin according to the statutes of distribution.

A person may be under a moral obligation of making a will from the command of a lawful superior, or because quarrels and dissensions about his property will be the consequence of his dying intestate.

5. A will is revoked by the subsequent marriage of the testator, by the due execution of a subsequent will which is inconsistent with the former, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is required to be executed; or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking the same. Such are the provisions of section 20 of the Wills Act, 1837, and section 21 should also be noted. It is as follows: "No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have

any effect (except so far as the words or effect of the will before such alteration shall not be apparent) unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin, or on some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or some other part of the will."

NOTE. — In some American States a minor cannot be appointed an executor; but there are many where his appointment is legal, while, however, he cannot be permitted to exercise his office until he reach his majority, or the age determined by statute; which age is in some States at seventeen, in others eighteen, and in some twenty-one. Until his authority can be exercised, the probate court appoints an administrator *durante minore aetate cum testamento annexo*, who will administer the estate until the requisite age is reached by the minor. — END OF NOTE.

6. The execution of a will is usually confided by the testator to a person or persons named by him and who are called the executors. Any one who is capable of making a will may be made an executor, as may even a minor, though he cannot act until he attains full age. One or several may be appointed, but no one is bound to accept the office. If a person dies intestate, or if no executor was appointed in the will, or if he who was appointed refuse to act, an administrator will be appointed by the court to administer

the estate. The widow or widower or the next of kin of the deceased person is as a rule the person to be selected. The will must be proved in the probate, divorce, and admiralty division of the high court. Probate in common or noncontentious form may be granted in the district registry within whose district the deceased had a fixed place of abode. Where the assets are small the county court has jurisdiction in contentious cases, otherwise these must be settled in the high court.

An executor is the legal representative of the testator, and his duties are:

a. To bury the deceased in a manner suitable to his estate. There is no property in a dead body, and a direction by will as to the disposition of the testator's body cannot be enforced by English law. Thus the executor would not be bound to have the body of the testator cremated though directions to that effect were contained in the will.

b. To obtain probate within the prescribed time.

c. To collect the effects of the deceased with reasonable diligence.

d. To pay the debts of the deceased in the order and manner prescribed by law, and in general in the following order: funeral expenses, expenses of probate, Crown debts, debts having priority by statute, debts of record, debts by specialty and simple contract. The executor may voluntarily pay an inferior debt before a superior one of which he had no notice, and he is not at liberty to pay a debt which by law cannot be enforced against the estate, with the exception of a debt barred by time according to the statute of limitations.

e. To distribute the estate according to the terms of the will.

Where there is no executor these duties devolve on the administrator appointed by the court, who after payment of debts distributes the estate in accordance with the will, if there is one, and if there is no will then in accordance with the statutes of distribution. To enable the executor or administrator to fulfil these various duties he is allowed a year by law before he can be compelled to pay legacies or to distribute the estate.

CHAPTER IV

ON MUTUUM AND USURY

1. Economic goods may be divided into those which are meant for immediate consumption and those which are meant to subserve our wants by repeated use. In the first category are articles of food and drink, in the second are commodities which are capable of rendering continued services, such as a saw, a sewing machine, a house. It is with the first class of goods that we have principally to do in this chapter. They are sometimes called fungibles because any amount is interchangeable with the same quantity and quality of the same commodity (*mutua vice funguntur*). Thus if I lend a bushel of wheat, I shall be satisfied if I get back a bushel of the same quality; I do not expect to receive back the same identical grain. The matter of the contract of mutuum is something fungible, which is consumed in the very first use of it.

It is obvious that such commodities may be the matter of many different contracts. They may be the matter of the contract of sale, or gift, or exchange, or loan. The contract which was called mutuum in Roman and canon law was a gratuitous loan of a fungible commodity on condition that after a certain period of time the borrower should restore to the lender an equal quantity of the commodity and of the same quality. Unfortunately, we have no term in English which is the precise equivalent for mutuum. We use the term loan of lending a horse, which

we expect to be restored to us *in specie*, and of lending a bottle of wine, which we do not expect back but another instead of the same size containing the same quality of wine. As an equivalent for mutuum we may make use of the expression *loan for consumption* as distinguished from *loan for use*.

In all contracts justice requires that values which are given in exchange should be equal. A sin against justice is committed by charging an unreasonable price for a horse. What the reasonable price is depends on the demand, on the available supply, and on a great variety of factors, but it is proximately determined by the common estimation of intelligent men at a fixed time in a certain place. The fair price of a fungible commodity which is consumed in the first use of it is the money equivalent of the value which that use has. The commodity is for consumption, and the only value that it has is the value of that consumption. There is no other use in the commodity which can give it any additional value. The fair price of a bottle of wine is the money equivalent of the value which the wine has for drinking. In other words, the value of the first consumption of the commodity is the value of the commodity.

On the other hand, commodities which are not consumed in the first use of them, but which continue to render repeated services, have a value over and above that of the first use. The value of a house is greater than the value of the lease of it for a year, because the house will continue to render services and be valuable after the year's lease of it expires. The fair price then of a commodity which is not consumed in the first use of it will be greater than the value of that first use.

All this seems evident, yet with a view to the deductions which we shall presently make, it is well to strengthen what has been said by the words of a modern professor of political economy. Dr. G. Cassel writes: "All economic goods may be divided into two categories: those which satisfy our wants in being consumed at once, and those which afford a series of useful services before they are worn out. Food is an instance of the former category, houses of the second. This line of subdivision is one of the most fundamental in economic science. The price paid for an article of immediate consumption is of course the same as the price paid for the use of this article. This is not so in the case of an article belonging to the second category. The price paid for the single useful service it affords is one thing; the price paid for the article itself is quite another."[1]

2. Money considered as a medium of exchange is a fungible; it is a commodity whose use is exhausted for the owner of it when he has paid it in exchange for value received. It is not, under this respect, a commodity which is susceptible of repeated use by the same owner. Money then may be the matter of a contract of loan for consumption, and, if a sum of money be thus lent, justice requires that an equal sum be returned at the end of the term, and justice will not allow a greater sum to be exacted in return. For the whole value of the sum of money is the value it has for making exchanges, the value which it has in the first expenditure of it; and if, over and above the sum lent, a further sum were demanded for the use of the money, the same thing would be charged for twice over. An equal sum is due in return for the use of the money; a further sum would be a second payment for the same use. Thus

[1] The Nature and Necessity of Interest, p. 86 (1903).

when money is regarded merely as a medium of exchange a sin against justice is committed if an additional sum besides the principal is exacted for a loan; it is called the sin of usury, money unduly exacted for the use of money.

This is the reasoning of Aquinas,[1] and it seems as cogent to-day as it was in the thirteenth century. By this argument he defended the doctrine concerning usury which the Fathers and Doctors drew from Holy Scripture and tradition. Benedict XIV sums up the constant teaching of the Church on usury in his celebrated encyclical, *Vix pervenit.* There the Pope says: "The sin which is called usury consists in this, that from the loan for consumption (which of its own nature requires that only so much as was received should be returned) the lender desires more to be returned to him than the borrower received, and therefore contends that some gain, over and above the principal, is due to him merely on account of the loan. For whoever, when once a sum equal to the debt has been repaid, is not ashamed to exact something more from the borrower on account of the mere loan, which has been repaid by the equal sum, such a one stands convicted of acting against the obligation imposed by a loan for consumption, which requires equality between the sum lent and the satisfaction for it."

This argument is valid when money is regarded as a means of exchange for articles of consumption and a measure of their value. Until modern times this was the chief function of money, but now we find that the above argument does not impress us with convincing force because in modern society money is not only a means of exchange for articles of consumption and a common meas-

[1] Summa, 2–2, q. 78, a. 1.

ure of value, but also the most convenient form of storing capital. Within the last hundred or hundred and fifty years modern society has become capitalistic, and money is the chief form of capital. No wealth-producing object of importance can be undertaken without a supply of money, and money is now readily exchangeable for land, machinery, means of distribution, and other instruments for the production of wealth. Capital is one of the factors necessary for the production of wealth, and it is the chief instrument of its production. Money, then, looked upon as capital, is not a mere fungible; it is not a commodity which is consumed in the first use of it; it is the main instrument necessary for the production of wealth, and it thereby acquires a new function; it becomes virtually productive and puts on the nature of land and machinery, with which it is so readily exchangeable. Indeed nowadays land can hardly put forth its natural productivity without the aid of capital, and machinery cannot be worked for the production of wealth without it. It follows then that nowadays money is not merely a means of exchange; it is also an instrument of production, and just as money may be charged for the use of land, or of a house, so money may be charged for the use of money. Money now has its fair and reasonable price like any other commodity, and the sin of usury is committed not by taking a fair and reasonable interest for a loan, but by exacting excessive interest. What is a fair and reasonable interest is a question whose solution depends upon circumstances, and, proximately, on the common estimation of intelligent men, like the fair and reasonable price of other commodities.

The foregoing seems to be the true solution of the old and much-disputed question of usury. It rests on histor-

ical facts and economic truths which are commonly admitted by modern theologians and economists, and it furnishes a satisfactory explanation of the changed attitude towards the taking of interest for money loans which the Church has adopted in modern times.

Although the use of money as capital was known in particular places and especially in centers of commerce in former ages, yet this use was exceptional and could not characterize money in general. The capitalistic function of money was of very gradual growth, and we have to wait till the latter part of the eighteenth, or the first part of the nineteenth, century before the capitalistic era was fully developed even in the most advanced nations of Europe. It may be well to quote one or two passages from economists of standing in proof of this. Dr. Cunningham writes: "In dealing with the Christendom of earlier ages we have found it unnecessary to take account of capital, for, as we understand the term in modern times, it hardly existed at all. In the fourteenth and fifteenth centuries we may notice it emerging from obscurity, and beginning to occupy one point of vantage after another, until it came to be a great political power in the State. . . . It would be still more hopeless to try to treat the intervention of capital as an event which happened at a particular epoch, or a stride which was taken within a given period. It is a tendency which has been spreading with more or less rapidity for centuries, first in one trade and then in another, in progressive countries. We cannot date such a transformation even in one land; for though we find traces of capitalism so soon as natural economy was ceasing to be dominant in any department of English life, its influence in reorganizing the staple industry of this country

was still being strenuously opposed at the beginning of the present century." [1]

The following is from Professor Cassel's book, "The Nature and Necessity of Interest": "Interest paid for the use of capital, not for the use of money. . . . The question, For what is interest paid? was taken up again, a few years afterwards, and treated in the most successful way by the eminent French economist, Turgot. He rejects the old idea of a 'price of money,' and defines interest as the price given for the use of a certain quantity of value during a certain time — a formula never afterwards surpassed in clearness and definiteness. He shows how this price is fixed by demand and supply, and he gives special attention to the causes which govern the demand for capital. What he has to say on this subject is even in our days of the highest value, and should not be neglected by any serious student of the theory of interest. He puts capital, *i.e.*, the use of a certain quantity of value during a certain time, as a factor of production on the same line with the other factors." [2]

Thus historical fact and scientific explanation of the rise of the capitalistic age and the theory of interest on money as capital synchronize with the beginnings of the change in the Church's teaching on the lawfulness of interest on loans. In the year 1830 the Holy Office gave answer to a question of the Bishop of Rennes that confessors were not to be disturbed who absolved penitents in spite of their taking interest on money lent to merchants. Similar answers followed in quick succession, so that now there is no practical difficulty as to the lawfulness of taking moderate interest for money loans, though the Church has not yet formally settled the general question.

[1] Western Civilization, n. 114. [2] p. 20.

In England the usury laws, dating from Edward the Confessor, were repealed in 1854, owing to the prevalence of the opinion that such laws were economically unsound and practically ineffectual. Experience, however, has shown that the rapacity of usurious money lenders requires curbing, and the Money Lenders Act, 1900, empowered courts of justice to grant relief from any usurious bargain which in the opinion of the court was harsh and unconscionable.

NOTE. — In the United States the legal rate of interest varies from five to eight per cent.; the rate of interest allowed by contract ranges from six to twelve per cent. in most of the States; but in nine States (California, Colorado, Connecticut, Maine, Massachusetts, Montana, Nevada, Rhode Island, and Utah) there is no limit to the rate allowed by contract. In some States those who charge excessive interest are punished by the loss of interest, as in Alabama and Florida; others lose both principal and interest, as in Arkansas and New York; while in some States the principal only is lost, as in Delaware and Oregon. When a contract for a certain rate of interest is made in a State where such rate is permitted, it will be enforced in another State where such rate is unlawful; also if a person in a State where a certain rate is not allowed contract to pay it in a State where that rate is allowed, the contract is valid and will be enforced. — END OF NOTE.

CHAPTER V

ON SALE

SALE is a contract by which the seller transfers the ownership of a certain commodity to the buyer in consideration of a fixed price. The English law on the sale of goods is different from that on the sale of real property, and so we will divide this chapter into two articles; in the first we will treat of the sale of goods, in the second of the sale of realty.

Article I

On the Sale of Goods

1. The term *goods* includes all personal chattels other than things in action and money. It also includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.[1]

A contract of sale of goods may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or it may be implied from the conduct of the parties. If the value of the goods sold be ten pounds or upwards, the contract cannot be enforced by action unless the buyer accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or mem-

[1] Sale of Goods Act, 1893.

orandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf. This is a rule of the external forum and does not affect the conscience.

2. The subject-matter of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale. The contract may be absolute or conditional. Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract, and in the forum of conscience on the intention of the parties. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is: 1. an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass; 2. an implied warranty that the buyer shall have and enjoy quiet possession of the goods; 3. an implied warranty that the goods shall be free from any charge or encumbrance in favor of any third party not declared or known to the buyer before or at the time when the contract is made.

According to English law there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

1. Where the buyer expressly or by implication makes

known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

2. Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed.

But whatever may be the rules of law for the external forum, in the forum of conscience the contract will be invalid whenever on account of hidden defects the thing sold is substantially different from what the buyer thinks that it is, for then there is no consent in the same matter and the contract is void by natural law. If hidden defects only lessen the value of the thing, but do not make it substantially different from what it appears to be, the price should be accommodated to the value, but the seller is not bound to point out the defects to the buyer. If asked about them, the seller should make known even accidental defects, or say that he does not guarantee their absence.

3. By law the price may be fixed by contract, or may be left to be fixed in manner thereby agreed on, or it may

be determined by the course of dealing between the parties. If no price is thus determined, the buyer must pay a reasonable price, and what is a reasonable price is a question of fact dependent on the circumstances of each particular case.[1]

In conscience, however, the price of things sold does not depend merely on the agreement of the parties. In contracts the equality which justice demands must be observed, and so in sale the price must be equivalent to the value of the thing sold. We do not mean the individual value in use to the buyer or to the seller, but the social or exchange value which the thing possesses. This value will be represented by what the law calls a reasonable price, and sometimes it is fixed by law, so that certain commodities and services have a legal price. In the Middle Ages there was a legal price for most of the articles of commerce, and theologians taught that there is an obligation in conscience to adhere to the legal price as long as the law is in force. In cases where the law has not determined the price, theologians teach that there is an obligation in conscience to adhere to the natural or common price of the commodity. This is not something purely subjective, much less is it purely individualistic; it depends upon supply and demand, upon the costs of production, the manner of sale, and on other factors. It is proximately determined by the common judgment, or the common estimation of those who are best acquainted with all the factors which determine social value in the particular case. This is the famous theological doctrine of the just price of commodities, and it only needs to be properly understood to be appreciated as eminently practical and equitable. The just price of a commodity is not something which

[1] Sale of Goods Act, 1893, s. 8.

can be mathematically determined; it admits of a certain latitude, like everything that depends on a general moral estimate. Theologians distinguish the highest, the lowest, and the mean just price. The highest is that above which the commodity in question is not commonly sold; the lowest is that below which it is not commonly sold, and the mean is between the two. Justice will be observed if the price at which a thing is sold is not above the highest nor below the lowest at which the thing sells at the time and in the place in question. As a rule, market prices are just, because they are settled according to the common estimate of buyers and sellers as to what are fair and reasonable prices under the circumstances.

Here theologians usually discuss a number of questions concerning the price of commodities in particular cases where there is special difficulty. In the case of rare or single objects such as a first folio of Shakespeare, or a painting by a great master, or a winner of the Derby, where there is no market price, many theologians teach that no injustice is committed whatever be the price received from a buyer who acts with full freedom and knowledge. Fancy prices may be foolish, but they are not unjust. No difficulty is made by theologians in allowing one to sell at the current rate who has certain information of an imminent fall in price. A merchant may also buy things of value from uncivilized owners for trinkets. In the place and among the people concerned there is equality of value between merchandise and price. A seller is justified in asking a higher price, a price of affection the theologians call it, for what he cannot part with without more than ordinary pangs. The seller may not, however, charge for some special value in use which the thing sold

has for the buyer. That belongs to the buyer, not to the seller, who cannot therefore sell it.

4. The following rules as to the transfer of property in the goods sold are given in the Sale of Goods Act, 1893:

Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 1. — Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2. — Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.

Rule 3. — Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining

the price, the property does not pass until such act or thing be done, and the buyer has notice thereof.

Rule 4. — When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer: *a.* When he signifies his approval or acceptance to the seller or does any other act adopting the transaction; *b.* If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5. — Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied and may be given either before or after the appropriation is made.[1]

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer; but when the property therein is transferred to the buyer, the goods are at the buyer's risk, whether delivery has been made or not.

Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

[1] Sale of Goods Act, 1893, ss. 16–18.

5. As a general rule the buyer acquires no better title to goods than the seller had, but where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.[1]

Market overt in the country is only held on the special market-days provided for particular towns by charter or prescription; but in London every day, except Sunday, is market-day. The market-place or spot of ground set apart for the sale of particular goods is also in the country the only market overt; but in the city of London every shop in which goods are exposed publicly to sale is market overt, for such things only as the owner professes to trade in. It is of the essence of the custom that the sale should be an open and public sale, so a sale in a salesroom and apart from the shop, or at a wharf, is not within it. Nor is sale by sample, the bulk sold not being exposed in the shop. Nor does the sale of horses come within the rule of market overt.

When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise.

[1] Sale of Goods Act, 1893, s. 22.

Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.[1]

6. In execution of the contract it is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer, is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the

[1] Sale of Goods Act, ss. 23–25.

seller's place of business, if he have one, and if not, his residence, provided that if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

Where, under the contract of sale, the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them; but if the buyer accepts the goods so delivered, he must pay for them at the contract rate.

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he must pay for them at the contract rate.

Where the seller delivers to the buyer the goods he contracted to sell, mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.[1]

Unless otherwise agreed, where goods are delivered to

[1] Sale of Goods Act, ss. 27–30.

the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.[1]

Notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law, *a.* a lien on the goods or right to retain them for the price while he is in possession of them; *b.* in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them; *c.* a right of resale as limited by the Sale of Goods Act.

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.[2]

Article II

Sale of Real Property

1. In this article we will give certain general notions on the sale and purchase of real property, which is a very technical subject in English law. Our brief summary is derived from the Encyclopedia of the Laws of England, *s.v.* Vendor and Purchaser.

In general, any owner of any kind of estate and interest in land has power to sell it, and any person or corporate body legally capable of owning land has power to purchase it. This rule, however, is subject to the exceptions laid down above concerning the capacity to enter into a contract and to many others. Thus by the Mortmain Act,

[1] Sale of Goods Act, s. 36. [2] Ibid. s. 39.

1888, a corporation has no power to purchase land otherwise than under the authority of a statute or of a license from the Crown.

2. Besides the general conditions which are requisite for the formation of any contract, a sale of real property must be in writing signed by the party to be charged therewith; it is to some extent *uberrimae fidei*, and it is subject to certain special rules which are implied by law for the regulation of the contract and the duties of the respective parties under it.

3. When a valid contract for the sale of land has been entered into, its general effect on the legal position of the parties may be summed up as follows: The moment there is a valid contract for sale, the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate for the security of that purchase money, and a right to retain possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivering possession. As from the date of the contract the property sold is at the risk of the purchaser, who must bear all subsequent losses, and is entitled to all subsequent gains.

4. Under an open contract and in the absence of special stipulations to the contrary, the duties of the parties as regards completion may be summarized as follows:

a. Duties of the Vendor. — 1. He is bound to both show and make a good title in accordance with the contract. 2. Upon being paid the purchase money and any interest upon it that may have become payable, the vendor is bound to execute, and procure the execution by all other

necessary parties (if any) of, a proper deed of conveyance vesting the legal and equitable estate in the purchaser. 3. He must, in or concurrently with the conveyance, enter into proper covenants for title and sometimes into certain other covenants. 4. Upon completion he must hand over to the purchaser all title-deeds in his possession or power. 5. Upon completion possession of the property, if not already obtained, must be given by the vendor to the purchaser. 6. He must do all things necessary for completion within the time agreed upon, if time is essential, or otherwise within a reasonable time.

b. Duties of the Purchaser. — 1. Correlatively with the first duty of the vendor above mentioned, the purchaser is bound to peruse the abstract when received, inspect the title-deeds produced, and make all objections and requisitions in due course. 2. He must prepare the conveyance and tender it to the vendor for execution. 3. Upon completion he must pay the persons properly entitled to receive it the purchase money and any interest upon it which may have become payable; and where equities or encumbrances exist of which he has notice, he is, unless the necessary parties capable of giving receipts concur, bound to see to the proper application of the purchase money. 4. He must pay to the vendor all proper costs and expenses incurred by the vendor, the liability for which is by law imposed upon the purchaser. 5. He must, upon completion, take possession of the property so as to relieve the vendor from all future liabilities incident to the ownership. 6. He must, like the vendor, do all things necessary for completion within the time agreed upon, or, if none, within a reasonable time.

CHAPTER VI

ON SALE BY AUCTION

1. Auction is a sale of property, whether real or personal, by which a person binds himself to transfer the ownership of the same to the highest bidder according to the conditions of sale. There are various methods in which the sale is conducted, and descriptions of the property to be sold and the conditions of sale are usually notified to the public by printed particulars of sale or by catalogues, and by the auctioneer himself. The bidding proceeds orderly, each bid being in the nature of an offer, which may be revoked until the auctioneer signifies his acceptance, usually by a stroke of his hammer. By this a contract is concluded with the last bidder, and the property becomes his. Ordinarily, however, the contract cannot be enforced by English law unless there is some memorandum of it in writing signed by the party to be charged therewith, or by his agent in that behalf.

2. Such a method of sale is, of course, honest and lawful if the conditions required either by the nature of the contract, or by law, or by special arrangement, be duly observed. The nature of the contract requires that, at any rate without notice, the owner himself should not bid, nor any other person on his behalf, and that the property should be knocked down to the highest bidder even if the price obtained be less than its value. The Sale of

Goods Act, 1893, expressly provides that where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer.[1]

However, in the next subsection the same act also provides that a sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller, and where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

Similarly, if all those who are present at an auction conspire together not to bid against each other, or if means are used to hinder people from bidding, injustice is committed. An agreement, however, between two persons not to bid against each other, when there are other bidders present, is not unjust or illegal, and *knock-outs*, as they are called, are common, by which persons agree that only one of them shall bid for any particular article, and after the sale put up privately among themselves the goods that each one has bought.

[1] Sale of Goods Act, 1893, s. 58, subsec. (3).

CHAPTER VII

ON MONOPOLIES

1. A MONOPOLY in general is the exclusive right belonging to one or to a certain number to sell some commodity. A legal monopoly has its origin in the law, which sometimes reserves to the government the right to sell some commodity or service, or grants the exclusive privilege of doing so to some one or to a certain number. Thus in some countries the government has a monopoly of salt or tobacco, as it has in England of the postal telegraph service. Copyright and patent right are private monopolies granted by law to an author or to the inventor of a patent. A natural monopoly arises from one or a few who band together and who are the owners of the sole source of supply of some commodity. When one or more capitalists obtain joint control over the sale of some commodity we have a capitalistic monopoly. The moral principles which govern the exclusive right to sell are applicable also to the exclusive right to buy, and we shall apply them to both in this chapter.

2. A legal monopoly is lawful provided that it does not militate against the common good. In England the Tudor sovereigns abused their privilege of granting monopolies, and the Parliament under James I made such grants illegal and void. Copyright, however, patent right, and certain other privileges of a monopo-

listic character, are recognized and protected by English law..

A natural monopoly, too, is of course lawful, but if the commodity or service which is thus monopolized is necessary or very useful for the common good, natural equity prescribes that the price demanded should be fair and reasonable, even if it be not regulated by positive law. If the subject-matter of the monopoly belongs to the class of non-necessaries and luxuries, as, for example, a mine of diamonds or rubies of special quality, it cannot be said that the price is fixed and determined by natural conditions, and the owner will be justified in taking any price that he can get without fraud or misrepresentation.

Even capitalistic monopolies of commodities or services which are necessary or very useful to the community are not morally wrong if the prices charged are fair and reasonable, and if there is nothing reprehensible in the method of conducting business. The public may derive considerable advantages from these monopolies. They are capable of effecting great savings in the costs of production, advertising, distribution, and general management, and they may secure a large return on their capital and at the same time sell cheaply to consumers. They obviate, too, the wastes and the recurring depressions in trade which follow from unlimited competition.

3. Monopolies, however, are morally wrong when the prices demanded for necessary or useful articles of consumption are excessive, or when the methods of business are unjust, uncharitable, or generally unlawful. The prices will be excessive when much more than a fair return for the capital employed is obtained, after all the costs of

production and distribution have been defrayed, and when as a natural consequence they are higher than would rule if there were no monopoly. When means are used to crush rivals in order to secure a monopoly, when bribery of public officials is practised to obtain from government specially favorable laws or treatment, when discriminating rates are obtained from railways and other companies, when workmen are tyrannically and unjustly treated, when prices of raw material are unduly depressed and producers are robbed of a fair compensation for their toil and trouble, and in general when fraud or force is used to accomplish the end in view, the methods of business are immoral, and monopolies which employ such methods are to be condemned.

If prices demanded by a monopoly are in the estimation of prudent men higher than are fair and reasonable, injustice is committed, and there is consequently an obligation to make restitution to the buyers who have been robbed. If the prices charged are not altogether unfair and unreasonable, but high, and above what in the circumstances would be considered moderate, there will be a sin committed against charity, in that private advantage has been unduly pursued to the detriment of the people, who have been compelled to pay higher prices for the enrichment of the monopolists.

From what has been said it is clear that what are called "rings" and "corners" in wheat, cotton, and other such commodities, are morally wrong, in that they cause the financial ruin of many people, and produce wide distress and instability of trade. Trusts, too, and combinations in trade are full of danger for the community. They wield immense power, and the temptations to abuse it,

especially as a company has no conscience, as the saying is, are too great for the common run of business men. It is well that the Government should have the right of examining and inspecting the affairs of such bodies, and of applying the necessary remedies in case of abuse.

CHAPTER VIII

ON BAILMENT

1. BAILMENT is a contract by which the possession of chattels is delivered by one person (the bailor) to another person (the bailee) either to be delivered by the bailee to a third person or to be redelivered to the bailor when the purpose of the bailment is at an end.

According to the common enumeration there are six kinds of bailment: *depositum*, *commodatum*, *locatio et conductio*, *vadium*, *locatio operis faciendi*, and *mandatum*. Of these *depositum* and *mandatum* are for the benefit of the bailor alone, and the bailee is liable for only gross negligence in the performance of his duty. *Commodatum* is for the sole benefit of the bailee, who is therefore liable for even slight negligence. The other kinds are for the benefit of both bailor and bailee and the bailee will be liable for ordinary neglect. The foregoing degrees of negligence are required by law to make the bailee liable, but by express agreement he may bind himself to more or less care, and then he will be held liable accordingly. Moreover, when a bailee possesses any special skill, the omission to use that skill in the execution of the trust committed to him will be imputed as gross negligence even if he derived no benefit from the bailment.

2. A deposit is a bare naked bailment of goods delivered

by one man to another to keep for the use of the bailor without reward. The depositary in general is not allowed to use the deposit, for it is given to him to keep for nothing; he is bound to exercise the same care of the deposit as he does of his own goods, but he will only be answerable for gross neglect.

3. A mandate is the delivery of goods or chattels to somebody who is to carry them, or do something about them gratis. The mandatary, like the depositary, is liable only for gross neglect, but if his situation or profession is such as to imply skill, the failure to use that skill will be imputable as gross neglect.

4. A loan is the lending of goods or chattels to another to be used by him gratis. As the borrower obtains the use of the thing lent for nothing he will be answerable for even slight negligence, and he is not justified in using it for a longer time or for other purposes than was agreed upon. He is not responsible for reasonable wear and tear. The lender on his side is responsible for defects in the chattel with reference to the use for which he knows the loan is accepted, of which he is aware, and owing to which directly the borrower is injured.

5. In the contract of hiring where goods are lent to a person in consideration of payment, the hirer is bound to use ordinary care of them such as a prudent man would take of his own goods, and he will be responsible for ordinary negligence.

6. Pawn or pledge is a contract by which goods or chattels are delivered to another to be security to him for money borrowed of him by the bailor. The pawnee must use ordinary diligence in the custody of the pledge which he is not permitted to make use of except when its

keep entails expense, as in the case of a horse, and then the pawnee may make reasonable use of it so as to indemnify himself for its keep.

The pawnee may recover his debt by giving notice to the pawner that he will sell the subject of the pledge, or he may sue for his debt, or if he pleases he may adopt both remedies. A pledge differs from a *lien* in that this only gives the right to retain property, and from a *mortgage* of personal estate which passes the actual property in the goods to the mortgagee.

Pawnbrokers form a special kind of pawnees, but although transactions dealing with loans above ten pounds are governed by the common law, loans of ten pounds and less are subject to the Pawnbrokers' Act, 1872. By this act every pledge must be redeemed within twelve months from the day of pawning, with seven additional days of grace. If a pledge is not redeemed within that time, and the amount for which it was pledged does not exceed ten shillings, it becomes the absolute property of the pawnbroker; if it was pledged for above ten shillings, it may be redeemed until actual sale, and such sale must be by public auction, and the surplus after the costs of the sale and the amount of the pledge and interest must be accounted for.

NOTE. — There does not appear to be any place in the United States to which the distinction here given for English pawnbrokers can be applied. In this country the statutes usually state the maximum of interest which the pawnbroker can charge on the loan, and also determine the time after which he can dispose of the article pawned. In many States, on sums of one hundred dollars or less,

three per cent. per month for the first six months is charged, and two per cent. per month for the following six months. When the sum exceeds one hundred dollars, two per cent. per month for the first six months, and one per cent. for the next six months is charged. Pawn-tickets are generally good for one year only, but may be renewed upon payment of the interest. The following is the law of the State of Missouri regarding the interest on loans and the time of redemption.

"SEC. 8858. It shall be unlawful for any pawnbroker to charge or receive more than two per cent. per month for any loan made by him.

"SEC. 8859. In case the person obtaining the loan fails to pay the interest when due, the pawnbroker shall not sell the article or articles so pawned with him as security for such loan till after the expiration of sixty days from the date of such failure; and the person so failing may, at any time within the said sixty days, redeem said article or articles: *provided*, that he pay the full amount of principal and interest due, according to the terms of the contract, at the date of redeeming; but if the person obtaining the loan fail to redeem said article or articles within the said sixty days, as above provided, he shall thereby forfeit all his right, title, and interest in and to such articles to the pawnbroker, who shall thereby acquire and possess an absolute right in them, and to hold and dispose of them as his own property: *provided, further*, that if the borrower shall lose his pawn-ticket he shall not thereby forfeit his right to redeem, but may make affidavit of such loss, describing the property pawned, which affidavit shall take the place of said pawn-ticket." — END OF NOTE.

The pawnbroker is made liable for loss in case of fire, against which he may protect himself by insurance, and he may treat the person who produces the pawn-ticket as entitled to redeem the pledge.

7. The last species of bailment is a contract by which goods or chattels are delivered to be carried, or something is to be done about them for a reward to be paid by the bailor to the bailee. With regard to the liability of such bailees a distinction is made between persons exercising a public employment, such as public carriers, and private persons. The former are responsible for all losses except such as happen through the act of God and the King's enemies. The latter are only bound to exercise the reasonable care which is to be expected from a skilled storekeeper acquainted with the risks to be apprehended; and this care must be shown not only in obviating the risks, but in taking all proper measures for the safety of the goods or of a portion of them when the risks have occurred. There are special laws which govern the liability of railway companies and innkeepers.

CHAPTER IX

ON PRINCIPAL AND AGENT

1. A CONTRACT of agency arises where one person, called the principal, authorizes another, called the agent, who accepts the charge, to represent him, or act on his behalf, and undertakes to be answerable for what that other does within the scope of his authority.

This contract, like others, requires the mutual consent of the parties to it, and that consent may be express or implied in their actions and course of dealing. Thus not only is a wife the agent of her husband for the purpose of supplying herself with necessaries, but a woman with whom a man cohabits occupies the same position as long as the cohabitation continues. Indeed, agency may be constituted by ratification of acts done on behalf of another even without previous authorization. No special formality is required in appointing an agent except in the case of a corporation, or where the agent is authorized to execute a deed on behalf of the principal, in which case the appointment must be by deed.

Whatever a person may do by himself he may appoint an agent to do for him, *qui facit per alium facit per se;* and any one of sound mind may be appointed an agent, even one who, like a minor, cannot enter into legally binding contracts for himself. An agent cannot delegate his authority to another for, *delegatus non potest subdelegare.*

Agency is of different kinds, universal, general, or special. A universal agent is empowered to do any acts on behalf of his principal; a general agent is empowered to do all acts in some particular trade, business, or employment; a special agent is authorized to do some particular act for the principal; a *del credere* agent engages to be responsible to his principal for the purchase money of goods sold by him.

2. The rights and duties of principal and agent between themselves are settled by their intention as manifested or implied in the contract which they have concluded. In default of express or implied agreements to the contrary the duties of the agent implied by law are: to perform the contract of agency; to observe the limits of his authority and the instructions given him by the principal, as also the customs and usages of the business in which he is employed; in all things left to his discretion to act with the most perfect good faith in the interest and for the benefit of his principal; to exercise due skill, care, and diligence, according to the nature of the business entrusted to him and the terms of the agency; to keep the money and property of his principal separate from his own; to pay over to the principal all moneys received to his use, and to account to him for all secret profits and commissions. No agent is allowed to enter into any transactions in which he has a personal interest at variance with his duty to his principal or from which he obtains any personal benefit or profit, except with the consent of the principal; and any secret commissions or profits which he acquires are considered as received for the principal's use. This rule of law is just, and it should be adhered to when the agent obtains a fair and equitable remuneration for his services from the principal. It is

obvious that the agent may keep secret commissions which he receives from others with the express or implied consent of his principal, and he may be excused in conscience if he retains for his own use the fruits of special and extraordinary diligence which he was not bound by his contract to employ, together with gifts and presents made to him personally to secure or retain his custom, provided that the interests of his principal in nowise suffer in consequence.

The principal on his part is bound to pay a fair remuneration to the agent for his services, to accept the obligations lawfully entered into by the agent in his behalf, and to indemnify him for all expenses and losses that he has incurred in the course of his agency.

3. Even if a universal or general agent exceeds his authority in a particular instance, yet the principal will be liable if the act came within the agent's ordinary authority. This is not the case with a special agent, for in this case it is the duty of those who contract with him to satisfy themselves as to the extent of his powers.

As a general rule the agent incurs no personal liability, for he acts on behalf of his principal who alone is bound. Contrary to the general rule, the agent will be liable when he conceals his principal, or when he acts without authority, or when he exceeds that authority and fraudulently misrepresents its extent, or when he specially binds himself, though acting as an agent. When the fact of agency is not known, or when the agency is known but the principal is not disclosed, the principal on being discovered is held liable as well as the agent. In law, but not in conscience, the principal is liable for the fraud and wrong committed by the agent within the limits of his authority even without the sanction of the principal.

4. A contract of agency is determined by the death of the principal, by the revocation by the principal of the agent's authority, by the agent's renunciation of office with the principal's consent, by the principal's bankruptcy, by the effluxion of time, and by the fulfilment of the object for which the agency was created.

CHAPTER X

ON PARTNERSHIP

1. Partnership is defined to be the relation which subsists between persons carrying on a business in common with a view to profit. Business here includes every trade, occupation, or profession. The partners collectively are called a firm, and they carry on business under the firm name.

In general all persons are capable of entering into partnership, and no special formality is required for the purpose; it may be done by word of mouth, or inferred from the conduct of the parties. By English law not more than ten persons may form a partnership for carrying on a banking business, and not more than twenty for other purposes.

Note. — By common law any number of persons may form a partnership; nor do the statutes of any of the States place any restriction in this respect. The other principles set down by the author in this chapter on Partnership are substantially in force through the United States. Besides the ordinary partnership, nearly every State and Territory in the Union admits by statute what are commonly called limited partnerships, in which the liability of certain members of the firm, called *special* partners, is limited to the amount of capital contributed by them, the others, who are called *general* partners, being liable for all the debts of the firm. The limited partnerships are formed and conducted

according to the enactments of the different States, which are by no means uniform, some States permitting such partnerships for every line of business except banking and insurance, others, like the State of Missouri, excepting brokerage also, and others again placing further restrictions. — END OF NOTE.

2. Every member of a firm is an agent of the firm and of the other members for doing any act which is necessary for the carrying on of the business of the firm in the usual way. The partners may indeed agree among themselves to restrict this power with reference to one or more of their members, and this agreement will be upheld and will excuse the firm from liability for the acts of those members against the claims of all who had notice of the agreement. Unless otherwise provided by the partnership articles, any member as agent of the firm has implied authority to receive and give receipts for debts due to the firm, to draw checks on the firm's bankers in the firm name, to purchase on the credit of the firm goods required for carrying on its business in the usual way, to sell the goods of the firm, to engage servants for the business of the firm, and to borrow money on its credit. In order that the firm may be liable for these and other acts of a member, it is necessary that they should have been done by him in the firm's name as agent, not as principal and in his own name.

As a principal is liable for the fraud and wrong-doing of his agent in the course of his agency, so is the firm liable for the fraud and wrongs done by a member in the ordinary course of the business of the firm. The members of the firm are jointly liable for the debts and obligations incurred

by it, and the property of a deceased member is liable also severally, but not until the separate debts of the deceased have been paid.

3. The relations of the partners between themselves may be determined by special agreement, but in the absence of such special agreement every partner is entitled to share equally in the profits of the business, and he must contribute equally to its losses. This remains true in the absence of agreement to the contrary even if the partners contributed unequal shares to the capital of the firm. Every member has a right to take part in the business of the firm, to express his views about the conduct of its business, and no change may be made without all being consulted. In case of disagreement the majority decides. Partners are bound to observe the utmost good faith in their dealings with one another, to work for the benefit of the firm, and in the conduct of the partnership business they may not obtain private advantage at the firm's expense.

4. A partnership may be dissolved by effluxion of time, by mutual consent, by the death of a partner, by the bankruptcy of a partner, by a judgment of the chancery division of the high court of justice which may be obtained on several grounds. After dissolution, the authority of each partner to bind the firm ceases, except in so far as is necessary to wind up the affairs of the firm.

CHAPTER XI

ON LEASES

1. A LEASE is a contract transferring a right to the possession and enjoyment of real property usually made in consideration of the payment of a periodical compensation called rent.

A lease may be for life, or for a fixed period, or from year to year, or at will, or sufferance. It is provided by the statute of frauds that "all leases, estates, interests of freehold, or terms of years, or any uncertain interest of, in, to or out of, any messuages, manors, lands, tenements, or hereditaments made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding. Except, nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount unto two-third parts at least of the full improved value of the thing demised." So that a lease by parol can only be made when the period does not exceed three years and the rent is at least two-thirds of the value. Furthermore, by the 8 & 9 Victoria, c. 106, every

lease required by law to be in writing, and assignments of leases, are void at law unless made by deed. It is also provided by the statute of frauds that any agreement for a lease for however short a period must be in writing.

Although a lease, which by law should be in writing and is not, has by the statute the effect of only an estate at will, yet if a tenant enters and pays rent under such a lease, it may serve as a tenancy from year to year. If a tenant holds over after the expiration of his lease and continues to pay a yearly rent, he will hold under the terms of the lease as far as they are applicable to the new tenancy from year to year.

A yearly tenant must give and is entitled to a reasonable notice to quit; which has been held to be six months, ending at the period at which his tenancy commenced. A year's notice is required when the tenancy is held under the Agricultural Holdings Act, 1883. To determine a monthly or a weekly tenancy a notice of a month or a week respectively should be given.

2. The tenant is always bound to use the premises leased to him in a tenantlike or husbandlike manner. In leases for a longer period it is usual to covenant as to whether repairs shall be done by landlord or by tenant. In tenancies from year to year the tenant is under no obligation to make substantial repairs in the absence of express agreement to that effect, nor is he bound to make good accidental damage by fire or other cause, nor ordinary wear and tear; but he must repair losses caused by his own negligence, and he must keep the premises wind and water tight. The general rule is that all rates and taxes are to be paid by the tenant; property tax, land tax, and tithes are exceptions and are paid by the landlord. Fixtures, or things

affixed to the freehold by the tenant, at common law became the property of the landlord, according to the maxim, *quidquid plantatur solo, solo cedit.* The common law rule, however, has been much mitigated, and now, in general, fixtures erected for the purposes of trade, ornament, or domestic use, and also agricultural fixtures, may be removed by a tenant. In certain cases, before doing this, due notice must be given to the landlord.

The landlord has a right to enter and seize goods belonging to the tenant in payment of rent which is due to him but which has not been paid.

NOTE. — According to common law, when a tenancy from year to year is to be determined by landlord and tenant, notice should be given by one to the other six calendar months before the expiration of the current period. In some States three months' notice, or even notice of a shorter period, suffices. Thus in the State of Missouri the law is given in Section 4109 as follows: "Either party may terminate a tenancy from year to year by giving notice, in writing, of his intention to terminate the same, not less than 60 days next before the end of the year." In the next section (4110) the law is set forth regarding other tenancies: "A tenancy at will, or by sufferance, or for less than one year, may be terminated by the person entitled to the possession by giving one month's notice, in writing, to the person in possession, requiring him to remove; all contracts and agreements for the leasing, renting, or occupation of stores, shops, houses, tenements, or other buildings in cities, towns, or villages, not made in writing, signed by the parties thereto or by their agents, giving to the other party or his agent one month's notice, in writing, of his intention to terminate such tenancy." — END OF NOTE.

CHAPTER XII

ON INSURANCE

1. THERE are three different types of this contract: marine, fire, and life insurance. Marine and fire insurance are contracts of indemnity by which the insurer undertakes to make good any loss suffered by the insured through the happening of some accident, in consideration of the payment of a fixed sum at once or at periodical intervals. On the other hand, in a contract of life insurance the insurer undertakes to pay a given sum to another upon the happening of a particular event contingent upon the duration of human life in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments. The particulars of the contract are set forth in a formal document called the *policy*, but the contract is made so as to bind the parties on the payment by the insured of the premium, *i.e.*, the money charged or an instalment thereof.

Usually insurance business is conducted by companies which frequently effect reinsurance with other companies, so that losses are spread over greater numbers and are more easily borne. In marine insurance individuals called *underwriters* frequently contract to indemnify the insured by subscribing the policy and putting opposite to their name the amount to which they will be personally liable in case of loss.

A man may effect an insurance with many companies, but as marine and fire insurance are contracts of indemnity, the insurer cannot get more than is sufficient to cover the loss; and if one company has paid the whole of this, it will be able to recover proportionate sums from the other companies with which the party was insured. Any person may insure his own life to any amount he thinks fit by paying proportionate premiums, but no one can insure the life of another unless he have a pecuniary interest in that life, and only to the extent of that interest. A wife has such an interest in her husband's life, and may effect an insurance on it for her own benefit.

Marine and life insurance policies may be assigned to others, but notice of assignment must be given to the party bound by the policy.

2. Contracts of insurance are *uberrimæ fidei*, and therefore require that all circumstances that are material to the contract should be made known to the insurer in order to enable him to come to a sound judgment as to the risks and the merits of the case. Questions are proposed to one who desires to effect an insurance, to which truthful answers must be given. Warranties and conditions, express and implied, are also part of the agreement. If the questions in the proposal are answered falsely, or if the warranties or conditions are not fulfilled, or if any material circumstance is not disclosed when it should be to the insurer, the latter may void the contract. It is difficult to say when, according to law, the contract is null and void so as to confer no rights in the foregoing circumstances even before the insurer has used his right to avoid the contract. In conscience it would seem that we may adopt the distinction here between what theologians call sub-

stantial and accidental mistake. That will be substantial to the contract which would have prevented the insurance being effected at all if it had been known; if it would not have prevented the insurance being effected but only varied its terms, it will be accidental. A substantial defect in the contract will make it null and void so as to transfer no rights at all; accidental defects will leave the contract valid, but there may be an obligation to supply the defect, as, *e.g.*, by paying a larger premium corresponding to the greater risk or more advanced age. A usual condition is that the policy of life insurance is avoided if the insured should die by his own hand. The purpose of this condition is to prevent a man gaining advantage by his own felonious act. So that if no advantage would accrue to the party, the policy may be saved in the absence of express condition to the contrary, as also if the insured committed suicide while of unsound mind.

If the premiums are not regularly paid at the proper time, the policy lapses, and the paid-up premiums are forfeited to the insurer. In such cases the policy may sometimes be revived on comparatively easy terms.

CHAPTER XIII

ON GAMING AND WAGERING CONTRACTS

1. In this chapter we will treat of certain contracts which depend for their effect of profit or loss upon some uncertain event.

A lottery is a distribution of prizes by lot or chance. Those who take part in a lottery ordinarily pay down a smaller sum of money in consideration for the chance of obtaining a larger sum or something of greater value, but it may happen that they lose by the transaction. The event is settled by the casting or drawing of lots in some form or other. English municipal law now prohibits lotteries where the distribution of prizes depends on mere chance, not on art or skill. The prohibition does not affect art unions carrying on business under a royal charter or under a constitution and rules approved by the privy council; but it does affect distributions of prizes on art union principles by persons other than art unions. However, inasmuch as a lottery is nothing more than the purchase of an uncertain chance, it is not necessarily unjust or in any way contrary to the natural law. If there is no fraud connected with the drawing of lots or the distribution of the prizes, and if the sum paid by those who take part in the lottery is to some extent proportionate to the chance of winning a prize and to its

value, a lottery will be lawful as far as conscience is concerned, for the municipal law in these matters is penal.

2. Gaming is playing at any game, sport, or pastime for money or anything of value which is staked on the result of the game, so that it is lost or won according to the success or failure of the person who staked it.

Clerics are forbidden, as we shall see, to play at games of pure chance with scandal to others and loss of their own time. English law also makes all gaming contracts null and void so that they cannot be enforced in English courts of justice.

NOTE. — Formerly, especially at the close of the eighteenth and during the first quarter of the nineteenth century, lotteries were quite numerous and popular in the United States, and the Government often authorized them for various purposes. The last lottery supported by government encouragement was the famous Louisiana State Lottery. The United States Congress, however, passed an act in 1890 forbidding the use of the mails for this institution, so that it was removed to Honduras. Lotteries are now forbidden by statute in the State of Louisiana, and indeed generally throughout the country, without any exception being made, as in England, in favor of those conducted on the art union principle. The penalty inflicted by some States for establishing or advertising a lottery, or aiding in either of these acts, is very severe. — END OF NOTE.

But here we consider the question not as affected by positive law, ecclesiastical or civil, but as it is in itself. Is gaming in itself morally wrong?

Apart from abuse, to play games of skill or even of pure

chance for a stake is not immoral. I may spend my money in moderation on recreation, or I may make a present of it to others if I choose. There is nothing immoral in agreeing to hand over a sum of money if I am beaten in a game either of skill or of chance. This perfectly lawful action will, however, become unlawful if one of the parties is compelled to play against his will, or if cheating and fraud are practised in the game, or if there is no chance of success on the part of one of the players (unless he knows this and freely consents to play in spite of it), or if the parties have not the money which they stake or at any rate not the free disposal of it on account of its being required to pay their debts, or to support themselves and their families.

Moreover, although gaming in itself and under the conditions which have just been laid down is not immoral, yet it is a dangerous pastime for many and easily leads to abuse, sin, and ruin. Especially is this the case when gambling is carried on in houses kept for the purpose, where all kinds of bad characters congregate. The keeping of such dens of iniquity is rightly punished by the law.

Note. — While in the United States gaming is considered unlawful and the contract null, the statutes of the different States vary considerably in matters of detail. Some statutes enact that a person losing money or property at any game may recover the same by civil action; also that the heirs, executors, or creditors of the loser may similarly recover from the winner. — End of Note.

3. Wagering or betting is the making of a contract on an unascertained event, past or future, by which the parties are to gain or lose, according as the uncertainty is determined one way or the other.

Wagering contracts in general are not enforceable in English courts of law, although there are some exceptions to the rule, but here we consider the matter from the point of view of conscience.

NOTE. — Some courts in the United States have enforced certain wagers, which were not considered to be opposed to morality or sound policy; while other courts in this country have held that no wagers are recoverable.[1] — END OF NOTE.

To make a bet is not sinful provided that the subject-matter of the wager is not sinful nor an incentive to sin, provided that the event is really uncertain for both parties, and provided that both understand the bet in the same way and are prepared to stand by the event and pay in case of loss. Even if one of the parties is certain as to the truth of the matter in question and he makes this known to the other, if the latter chooses to persist in his contention and stakes his money, the other will be justified in taking it.

What was said above about gambling is applicable also to betting. Although it is not sinful to stake a moderate sum of money of which one has the free disposal on some unascertained event under the conditions laid down above, yet a strong and dangerous habit may easily be formed by indulgence in the practice, and then sin, misery, and ruin to self and others are not far off.

Especially to be reprobated are certain modes of gambling which are practised now on money and produce exchanges. Dealings in "futures" and "options" and "time bargains" are for the most part merely speculative transactions, and do not differ essentially from betting as to what will be

[1] Cf. Bishop on Contracts, n. 531.

the price of stock or of some commodity at a future date. "Rigging the market" and similar devices are means employed by operators to influence the market in their own favor. These means are of course unjust, and besides inflicting loss on competitors they do great harm to outsiders by disturbing the natural prices of commodities, and not infrequently produce irreparable and far-reaching ruin.

BOOK VIII

ON THE COMMANDMENTS OF THE CHURCH

We saw in the Book on Laws that the Church has received power from God to make laws which bind all her children, and that she alone has authority to regulate all matters pertaining to the worship of God and the salvation of souls. The Catholic Church has exercised the power entrusted to her and imposed certain laws and precepts on the faithful. According to the Catechism the chief of these are six in number:

1. To keep the Sundays and holydays of obligation holy, by hearing Mass and resting from servile work.
2. To keep the days of fasting and abstinence appointed by the Church.
3. To go to confession at least once a year.
4. To receive the Blessed Sacrament at least once a year, and that at Easter or thereabouts.
5. To contribute to the support of our pastors.
6. Not to marry within certain degrees of kindred, nor to solemnize marriage at the forbidden times.

The last of these will be best explained when we come to treat of marriage; the other five will form the subject of the following chapters.

CHAPTER I

ON KEEPING CERTAIN DAYS HOLY

1. WHAT pertains to the obligation of hearing Mass and abstaining from servile work on Sundays and holydays of obligation has been already explained under the Third Commandment of the Decalogue. It only remains to add a few observations to what was there laid down.

Before Urban VIII issued his Bull *Universa*, September 13, 1642, various feasts were kept as of obligation in different countries. For the purpose of introducing greater uniformity, Urban VIII drew up a list of feasts which were everywhere to be observed and besides which no others might be observed without the sanction of the Pope. Besides all the Sundays of the year, the list contained the following feasts: Christmas Day, the Circumcision, Epiphany, Resurrection and two following days, the Ascension, Whitsunday and two following days, the Holy Trinity, Corpus Christi, Finding of the Cross, the Purification, Annunciation, Assumption, and Nativity of the Blessed Virgin; the Dedication of St. Michael, the Nativity of St. John the Baptist, SS. Peter and Paul, St. Andrew, St. James, St. John, St. Thomas, SS. Philip and James, St. Bartholomew, St. Matthew, SS. Simon and Jude, St. Matthias; St. Stephen, St. Sylvester, St. Joseph, St. Anne, the feast of All Saints, and one of the principal patrons in each

kingdom or province, and another principal patron in each city, town, or village, where such are venerated.

In most countries the number of these feasts has been greatly reduced, and in England they have been reduced to eight by decrees of the Sacred Congregation of Propaganda, dated March 9, 1777, and May 17, 1830. Those eight are: Christmas Day, the Circumcision or New Year's Day, the Epiphany, the Ascension of Our Lord, Corpus Christi, SS. Peter and Paul, the Assumption of Our Lady, and All Saints. In Scotland, in addition to the foregoing, the feast of St. Andrew is a day of obligation. The suppressed feasts are still observed as days of devotion.

As in England we had no patrons such as those whose feast was to be observed according to the Bull of Urban VIII, by a decree dated May 24, 1863, Pius IX granted permission for the name of St. George to be inserted in the prayer *A Cunctis* at Mass, and for a commemoration of St. George to be made in place of that of the patron among the suffrages of the saints in the Office. By a decree S.R.C., December 2, 1891 (n. 3758), regulars may add the name of their saintly founder as well. In Ireland the feast of St. Patrick is celebrated as the feast of the patron, and the Annunciation of the Blessed Virgin as a day of obligation in addition to those observed in England. In the United States the following are the holydays of obligation: Christmas Day, the Circumcision, the Ascension, the Assumption, the Immaculate Conception of Our Lady, and All Saints.

CHAPTER II

ON FASTING AND ABSTINENCE

1. THERE are various reasons why the Church bids Catholics to fast and abstain from flesh meat on certain days. By these means we more easily keep our lustful appetites in due subjection and we do penance for our sins. There are certain devils, which, as Our Lord taught us, are only cast out by prayer and fasting. Moreover, by denying and curbing our appetites we exercise ourselves in the virtue of temperance, and, like soldiers on parade, we accustom our lower nature to obey the command of reason, so that it may not betray us when we are in presence of the enemy in time of temptation.

The precept of fasting of itself contains that of abstinence and adds something to it, so that it will be advisable to explain first the obligation of abstinence and then pass on to fasting.

2. The Church commands all Catholics who have come to the use of reason to abstain from eating flesh meat on all Fridays, except the Friday on which Christmas Day may fall, and on the Sundays in Lent, unless leave be given to eat meat on them, as is now usually done. Formerly abstinence was prescribed not only on Fridays but also on Saturdays, on the rogation days, and on the feast of St. Mark, but this obligation was removed for England by a decree S.C. de P.F., May 17, 1830.

3. On days of abstinence the eating of flesh meat is

forbidden; that is, the flesh of animals that are born on land and that breathe. Fish, oysters, turtle, crab, are not forbidden, and in some countries other animals which have some connection with water are allowed. This precept, like that of fasting, is a positive law, and receives its interpretation from custom and the practice of good Catholics. Not only the flesh but the whole animal is forbidden food, so that not only suet, which counts as flesh, but dripping, lard, and jelly made from forbidden animals are also forbidden. A dispensation, however, was granted May 9, 1860, for Catholics in England to eat lard on days of abstinence, and the Congregation of the Holy Office has several times explained that such a permission extends to butter and to the fat of any animal.

NOTE. — The Holy See has granted three indults to the United States regarding the law of abstinence. One is called the Quadragesimal Indult, because it refers to the Lenten abstinence. His Eminence Cardinal Gibbons, along with the other Archbishops of the United States, sent a supplication to the Holy See in the following terms:

"1. Indulgendum esse usum carnium, ovorum, et lacticiniorum in singulis comestionibus die Dominica ac in comestione principali die Lunæ, Martis, Jovis, et Sabbati, exceptis Sabbatis quatuor temporum et majoris hebdomadæ. 2. Pariter usum lacticiniorum et ovorum, permittendum esse singulis diebus Quadragesimæ in collatione serotina et in comestione principali in diebus, in quibus non licet vesci carnibus. 3. Posse mane sumi frustulum panis cum haustu cafei, theæ, chocolati aut aliquid simile. 4. Ubi comestio principalis sumi non potest meridie, licere ordinem invertere ac collationem

mane, prandium vero vespere sumere. 5. Posse adhiberi laridum aut adipem (vulgo lardo, strutto) in præparandis cibis permissis. 6. Fideles a lege jejunii exemptos, cum usus carnis, ovorum, ac lacticiniorum omnibus permittitur, posse iisdem vesci pluries in die haud secus ac in Dominicis diebus ejusdem Quadragesimæ, in quibus non urget obligatio jejunii."

The Sovereign Pontiff, Leo XIII, after consultation with the Congregation of the Holy Office, decreed as follows: "Quoad 1, affirmative, vetita toto tempore Quadragesimæ etiam diebus Dominicis permiscuitate carnium et piscium. Ad 2, pro grata juxta preces, et quoad refectionem serotinam dissimulari posse. Ad 3, 4, 5, et 6, pro grata juxta preces ad decennium facta quolibet anno mentione obtenti indulti. Contrariis non obstantibus quibuscunque."

While the Holy See does not expressly permit the use of eggs and white meats (*lacticinia*) at the evening collation, the words, *dissimulari posse*, indicate that the faithful may be allowed to continue, or more strictly, need not be prevented from continuing the practice of eating eggs and white meats at the collation. Hence the Bishops of the United States issuing the regulations for Lent are accustomed to set down that eggs may be used in the collation. In regard to number 5, it appears certain that dripping from the fat of any animal may be used in the preparation of food. Regarding the proper interpretation of number 6, a question arises, viz., what is meant by the expression, *a lege jejunii exemptos*. It certainly does include those who are excused from fasting, *ratione ætatis vel laboris*, as appears from an answer of the Sacred Penitentiary (January 16, 1834); also those excused on account of sickness (*affectæ valetudinis*), as appears from an answer of

the same Congregation (March 16, 1882). But does it also include those who are only *dispensed* from the law of fasting? There is no decree which can be adduced in favor of this wider interpretation; nor is the word *exemptos*, strictly taken, applicable to those who are freed from the obligation by dispensation. Few theologians discuss the point. Noldin (De Præceptis, n. 679) and Tanquerey (n. 1126) hold that those who are merely dispensed cannot take meat more than once a day on those days permitted by the indult. On the other hand, Sabetti (n. 334, q. 8) is of the opinion that a person liberated from fast by dispensation is permitted to eat meat as often as those excused on any of the other grounds. It is difficult to hold this latter opinion, since there is no decree that grants such extension; nor does it appear that legitimate custom can be alleged in favor of it. The question was proposed for solution to the Holy See more than a year ago; no answer has yet been received.

A second indult was granted to the United States, viz., one in favor of soldiers and sailors, by which they have permission to eat flesh meat on any day of the year except Ash Wednesday, the vigil of Christmas, vigil of the Assumption, and the last three days of Lent. This privilege extends to their families if living with them, but not if living apart. To enjoy it they must be in actual service; if absent on leave, it does not hold good. The preceding indult allowing the use of meat on Holy Thursday extends also to them. If they can be regarded as *working men*, they can also enjoy the next indult *pro operariis*, which would excuse them on the eve of the Assumption and reduce their days of abstinence to four.

The third indult is granted to working men and their families, and is conveyed in the following terms: "Hæc

S. Congregatio de Prop. Fide in opportunum examen revocavit petitionem, quam Eminentia tua nomine Rmorum Archiepiscoporum Statuum Federatorum Am. eidem obtulit circa dispensationem ab abstinentia favore operariorum prædictæ regionis. Re mature perpensa præfata S. Congregatio censuit magis expedire ut quin detur indultum quoddam generale pro omnibus Statibus Federatis, tribuatur potius facultas singulis Ordinariis ad decennium permittendi usum carnium in iis circumstantiis locorum et personarum, in quibus judicaverint veram existere difficultatem observandi legem communem abstinentiæ. Ab hac vero permissione excludi debent præter omnes sextas ferias totius anni, etiam feria quarta Cinerum, totum tempus majoris hebdomadæ, et vigilia Nativitatis Domini. In iis vero diebus, in quibus ab Ordinario permittitur usus carnium hæc permissio pro obligatis ad jejunium extendi debet tantum ad unicam comestionem et firma manere debet lex prohibens ciborum mixtionem. Hujusmodi concessio censeri debet facta non tantum individuis operariis, sed etiam eorum familiis ita ut omnia earum membra de indulto participent." From the words of this decree it is clear that no general indult for all the United States is granted, but rather, as the Sacred Congregation explains, a faculty is given to each of the Bishops of this country, and the exercise of the faculty is left to the discretion of the Ordinary who is to be for the faithful of the diocese the judge of the difficulty of the common law of abstinence, taking into account circumstances of persons and places. By this faculty the Bishop may give leave to working men and their families for the use of flesh meat on all the days of the year except Fridays, Ash Wednesday, the last week of Lent, and the vigil of Christmas. He may

even permit that flesh meat be used more than once a day by those who are *not bound to fast*, the restriction of taking it only once a day being limited to those who are bound to fast. Many of the Bishops in the application or exercise of this faculty do not permit the use of flesh meat more than once a day even to those who are excused from fasting. This arises, it may be presumed, because they do not deem it advisable for those excused from fasting to use flesh meat more than once a day on those days included under the indult, and also because it would be inconvenient in a family meal to have flesh meat for those excused from fasting and none for those not so excused. In reference to this indult a very practical question arises, What is signified by the term *working men* (*operarii*)? Does it mean only those who are usually designated by the English word *working men*, *i.e.*, general laborers, mechanics, etc., or does it include also those engaged in the liberal professions, physicians, lawyers, etc. Sabetti (n. 338) holds the former view, arguing from the intention of those who petitioned for the faculty and from the purpose of the concession itself. The other opinion is defended by a writer in the American Ecclesiastical Review, vol. 13, p. 295, etc., where he says: "Under the term working people (*operarii*) seem here to be included all classes of people who cannot observe the abstinence laws on account of the labor they are obliged to perform, whatever may be the character of that labor. '*Lex non distinguit.*'" This second interpretation may, it seems, be followed so long as there is no decision of the Holy See restricting the meaning of the word *operarii*. While the intention of the Archbishops in presenting the petition was very probably limited to those who are usually called working people, and while the Holy

See is to be presumed to grant the petition according to the mind of the petitioners (the Archbishops of the United States) still the word *operarii* employed in the response of the Sacred Congregation is frequently taken to signify others besides working people. When, however, in the Lenten regulations, which usually make reference to this indult, the Bishop employs the term *working men* or *working people*, he would seem to indicate his intention that the privilege could be used only by those commonly designated by the term, and not by others who might be included under the word *operarii*. From the words of the indult itself it is manifest that a Bishop has authority to make such a limitation, even if *operarii* be capable of bearing a wider meaning. It may be noted that, in order to share in this indult, it is sufficient that any member of the family, male or female, belong to the class in whose favor the Bishop may extend the faculty. — END OF NOTE.

This precept binds under pain of grave sin, but a violation of it would not be a mortal sin unless an appreciable quantity of unlawful food were taken. Theologians are not agreed on what quantity is necessary to constitute grave matter, but, in the opinion of some, two ounces would be necessary and sufficient.

4. All Catholics who have come to the use of reason are as a general rule subject to the precept of abstinence as to other positive laws of the Church. However, inasmuch as positive laws do not bind when they could not be observed without relatively serious inconvenience, those who are sick, or are recovering from illness, or those who are in weak health and cannot take abstinence fare, are excused from observing this precept, and may eat meat on days of ab-

stinence. Children, too, of negligent Catholic parents who do not observe the law, Catholic servants in bigoted Protestant families who cannot get such food as the Church allows on days of abstinence and must fast unless they eat meat which is put before them, may lawfully do so. Dispensations also from the obligation of abstaining may for good reason be obtained from the Bishop or from the priest.

NOTE. — When the author says that a dispensation from the law of abstinence can be obtained from a priest, he means a pastor, or an assistant pastor performing pastoral functions, in relation to his subjects; a priest, or even a confessor as such, has no power to dispense from abstinence, unless it be delegated to him by some one having ordinary or quasi-ordinary authority. Even a Bishop can dispense only his own subjects, but under this term may be included not only those who have a domicile or quasi-domicile in his diocese, but also those who are *peregrini* or *vagi*. — END OF NOTE.

The superiors of religious orders have the same powers as Bishops with regard to their own religious subjects. Ordinarily these can only dispense in particular cases, but sometimes the Pope, the supreme legislator in the Church, dispenses all the faithful, or those of a province or a diocese, or delegates authority to do this to the immediate ecclesiastical superiors.

5. The precept of fasting limits both the quantity and the quality of food which may be taken. Essentially, fasting consists in taking but one full meal in the twenty-four hours and that after midday, but it also implies abstinence from flesh meat unless leave be given to eat it. It only limits food, not drink; liquid does not break the

fast, as the saying is. However, milk, soup, thick chocolate, and other very nutritious liquids count as food, not as drink, with respect to the law of fasting. Even when leave be given to eat meat on a day of fasting, it is not lawful to take both meat and fish at the same meal. This rule applies to all fasting days throughout the year and binds even those who are not bound to fast, unless they are exempt on the ground of sickness.

The foregoing is a general account of what fasting consists in, but in modern practice certain mitigations are allowed either by custom or by special indult. By custom one who fasts may take in the morning a little dry bread with tea, coffee, or thin chocolate, but the solid food must not amount to more than two ounces.

The full meal is usually taken after twelve o'clock, and then in the evening a collation or light supper may be taken by modern custom. At collation not more than eight ounces of solid food should be taken, and that of the lighter sort, so that even when a dispensation is granted to take flesh meat on fasting days those who fast may not take it at collation, nor such food as eggs, milk, and cheese. With certain exceptions, however, a little butter, cheese, or milk is now allowed in England by indult at collation on fasting days.

In early times the full meal was taken at sundown, and now for good reason it may be taken in the evening, and the collation in the morning or after midday.

6. It is special to the law of fasting that it only binds the faithful after they have attained the age of twenty-one. It binds under pain of grievous sin, which may be committed not only by taking more than one full meal in the day according to what has just been said, but also by

taking food at frequent intervals in small quantities, for thus the total amount would be considerable. When one who is bound to fast has already taken two full meals, he has broken his fast, and the law no longer binds him. Whereas the law of abstinence, or the prohibition against mixing lawful and unlawful food at the same meal, is broken, and sin is committed, as often as the prohibited act is done.

The days of fasting are the forty days of Lent, certain vigils of great feasts, the ember days, and in England the Wednesdays and Fridays in Advent in place of certain vigils of feasts which have been suppressed.

7. Though all who have reached the age of twenty-one are *per se* bound to fast, yet as a matter of fact many are excused on the ground of impossibility, work of importance which cannot be omitted without serious inconvenience and which cannot be done if fasting is observed, and dispensation.

Not only hard bodily labor in the fields, mines, workshops, or mills, but severe mental work such as teaching, continual preaching, or hearing confessions, excuses from the precept of fasting. The sick, convalescents, and those in delicate health are also excused. Even though the difficulty of fasting and at the same time of doing one's work is sometimes not sufficient of itself to excuse one from fasting, it will be sufficient for obtaining a dispensation, which may be given not only by the Pope, but by the Bishop, one's religious superior, or by the parish priest.

NOTE. — In the United States there is no fast on Wednesday in Advent, and in many dioceses not even on Friday, except, of course, in the week of Quarter Tense. — END OF NOTE.

CHAPTER III

ON ANNUAL CONFESSION

As THE Council of Trent teaches, there is a divine law which prescribes that all who fall into grievous sin after receiving Baptism should confess such sin to a priest and receive absolution for it from him. This divine precept is contained in the institution of the sacrament of Penance, and will best be explained when we come to treat of that sacrament. Here we have to do with a positive ecclesiastical law which supposes the divine law, but further determines it according to time and the person to whom the confession is to be made. The divine law does not determine any precise time for making the confession nor does it limit the choice of confessor. This was done by the Fourth Lateran Council, c. 21: "Let all the faithful of both sexes after they have come to years of discretion faithfully confess all their sins in private at least once a year to their own priest, and do their best to perform the penance which he shall enjoin them."

It is the common opinion of theologians that this law only affects those who have fallen into mortal sin, so that although venial sin may be confessed and affords sufficient matter for sacramental absolution, yet there is no law, human or divine, which imposes any obligation on the faithful in general to confess venial sins. The divine law

does not do this, as the Council of Trent explains (sess. 14, c. 5), and the Lateran law only determines the divine law.

One's own priest, according to the modern discipline of the Church, is any priest who has faculties for hearing confessions in the place where they are made. To satisfy the precept it is not sufficient merely to make one's confession; it must be made fruitfully, so as to merit absolution and reconciliation with God.[1]

No special time within the year is mentioned by the council, and various methods of reckoning the year would satisfy its requirements; but as Easter time is assigned for the annual Communion which is also prescribed, in practice the two precepts are fulfilled together within the time appointed for the Easter duties. If one has neglected to go to the sacraments within the prescribed time, he is not free for a further term, but he should go as soon as he can.

[1] Prop. 14, condemned by Alexander VII.

CHAPTER IV

THE EASTER COMMUNION

1. THERE is also a divine precept to receive Holy Communion: "Except you eat the flesh of the Son of man and drink His blood you shall not have life in you." [1] But no special time was assigned by Our Lord for the fulfilment of this precept; He left all such matters to be determined by the Church. The Fourth Council of the Lateran, therefore, made the universal law that all the faithful, after coming to years of discretion, should reverently receive the Holy Eucharist at least at Easter, unless it be deemed advisable to abstain for a time for some reasonable cause.[2]

2. In order that children may make their first Communion with fuller knowledge and more abundant fruit, the modern practice of the Church is not to admit them to Holy Communion before they are nine or ten years of age.

By the common law of the Church the fifteen days from Palm Sunday to Low Sunday are assigned as the time within which the Easter Communion must be made, and it must be made in each one's parish church. In England the Holy See has extended the time from Ash Wednesday to Low Sunday, and as we have no parish churches as yet, the obligation will be fulfilled by receiving Holy Communion in any church or public oratory.

[1] John vi. 54. [2] C. 21.

In the United States the time for fulfilling the Easter precept is from the first Sunday in Lent till Trinity Sunday; in Ireland it extends from Ash Wednesday to the octave day of the feast of SS. Peter and Paul.

This precept is not fulfilled by a sacrilegious Communion, and if it has not been complied with at the proper time the obligation still remains, and should be discharged as soon as the occasion offers.

Other matters concerning Holy Communion will be treated when we come to the Sacraments.

CHAPTER V

ON SUPPORTING ONE'S PASTORS

1. "KNOW you not," says St. Paul, "that they who work in the holy place, eat the things that are of the holy place; and they that serve the altar, partake with the altar? So also the Lord ordained that they who preach the gospel, should live by the gospel." [1] As then there was special provision made by God for the support of the priests and the maintenance of religion under the Old Law, so under the New Law Our Lord commanded that His ministers should be supported by those to whom they ministered. The faithful then are bound by divine precept to contribute according to their means to the support of their pastors.

The method of fulfilling this duty has varied at different times; nowadays, at least in missionary countries, the offerings of the faithful are almost the only source of church revenue, as they were in the first ages of Christianity. The Church urges this divine precept and further determines it either by universal law or by provincial and diocesan regulations.[2]

2. Ministers of religion have a right in justice to decent support, for from the fact that they are put by lawful authority in spiritual charge of a parish or mission, the

[1] 1 Cor. ix. 13, 14.

[2] Cf. 1 West. d. 23, nn. 4, 5; 2 West. d. 8; 3 Plen. Baltim. tit. 9.

people under their care are bound by an implicit contract to support them, just as citizens are bound to support temporal rulers, magistrates, and officials.[1]

The obligation then to support one's pastors is grave, but it is difficult to determine when mortal sin is committed in particular cases by failing to comply with this duty. Much depends on the degree of necessity in which a pastor is placed, and on the means of the parishioner. The sacraments and entrance into the Church should never be refused to the poor who cannot pay the usual fee, nor more especially is the priest justified in refusing the consolations of religion to dying people on the ground that they neglected the duty of supporting their pastors during life. The priest is bound by other ties to his flock than by the hope of earthly reward.

[1] St. Thomas, Summa, 2–2, q. 87, a. 1.

BOOK IX

ON THE DUTIES ATTACHED TO PARTICULAR STATES AND OFFICES

In the preceding Books we have treated of the duties which are incumbent on all men, or at any rate on all Catholics, by the natural, divine, and ecclesiastical law. Some special duties, however, arise from the nature of the state in which one is placed or of the office which one holds. Thus a judge or a doctor has as such certain special obligations as well as the cleric or the religious. The confessor should know all the obligations of his penitents, and so moral theologians usually treat in this place of the special duties of judges, doctors, clerics, and religious. We will follow their example in this Book and treat in the first part of the special obligations of certain laymen, in the second of those of clerics, and finally of those of religious.

Part I

ON THE DUTIES OF CERTAIN LAYMEN

CHAPTER I

ON THE DUTIES OF JUDGES

1. A JUDGE is defined to be a public person appointed by lawful authority to apply the laws to the settling of disputes between litigants and to the punishment of criminals.

He is said to be a public person because he is appointed by public authority, not chosen like an arbitrator by the litigants themselves, and moreover he is guided in his official capacity not by his private knowledge and ideas but by the evidence given in the case and by the laws which he administers. Case law, or judge-made law, in English jurisprudence, is no exception to this rule, for it is but the authentic interpretation and application of the common and statute law to concrete cases made in court by the judges of the superior courts.

A cause in which the private rights of the litigants are to be adjudicated upon is called a civil case or action; if the cause is one in which an offender is tried for the commission of a crime it is called a criminal case or action.

2. By his very position and the nature of his office a judge is bound to pass a just sentence according to law in the cases brought before him, and so he must possess

the requisite qualifications for this and set about it in the right manner. He must have a competent knowledge of the law which is to be his guide and which he is called upon to apply, and he must use at least ordinary diligence to get at the merits of the case before him. He must not allow his judgment to be influenced by such improper motives as fear or favor; his sentence must be dictated by a sense of even-handed justice. He must observe the rules of judicial procedure applicable to the case, and he must have the requisite authority or jurisdiction for dealing with it.

If in any of these points the judge is culpably at fault, he sins against justice and is bound to make good the damage which he causes. Moreover, inasmuch as judges ordinarily take an oath of office, he will also sin against the sanctity of his oath. A judge who should allow himself to be bribed to give an unjust sentence would not only be bound in conscience to repair the injustice done, but he would be liable to severe punishment for his offence. Even if he were to take a bribe for delivering a just sentence, he is bound in conscience to restore what he received. For, as his office binds him in justice to give sentence according to the merits of the case, such a service is no ground for special reward or payment, nor a just title for retaining a special reward or payment if he has received any.

3. The judge, as we have seen, must pass sentence according to the evidence before the court, not according to his own private knowledge or views. He may know privately that an accused man is guilty, but he must not condemn him unless his guilt has been proved by the evidence. But what if the judge knows for certain that an

accused man is innocent, and yet according to the evidence available he has been proved guilty? In such a case as this the judge must, of course, use all the means in his power to bring out the innocence of the accused party, or remit the case to another court. But supposing that he has done all in his power to avoid condemning the innocent man, and nevertheless the jury have found him guilty, and by law it only remains for the judge to pass sentence according to the verdict. Is he allowed to do so? This question was disputed among theologians. Some with St. Thomas taught that he might condemn the innocent man, for the witnesses were then guilty of injustice, not the judge, who did his duty in passing sentence according to law. Others denied that this is lawful, for to condemn the innocent, especially if there is question of a death sentence, is intrinsically wrong. Others distinguished, and taught that it is indeed unlawful to condemn an innocent man to death even when, by judicial process, he has been proved to all appearances guilty, but that when there is question of a fine or imprisonment which may be suffered without sin the judge may pass sentence according to law, for this is for the public good. Practically, therefore, according to the principles of English jurisprudence, the judge may lawfully pass sentence even of death in such a case, but he is bound afterward by making representations to the proper authority to do what he can to clear the innocent party.

When the evidence in a criminal trial is not conclusive, the defendant must not be condemned, for a man is presumed to be innocent until he has been proved conclusively to be guilty.

In a civil action when the rights of the parties are not

certain but only probable, the judge is bound to adjudicate in favor of him who has the more probable right, taking into account possession and all the other circumstances in the case. If there is equal probability on either side, the parties should come to a compromise, or, as some hold, the judge may decide in favor of either party.

4. The judge is bound to pass sentence according to law, for this is presumed to be just. It may, however, happen that particular laws are unjust, as when the seal of confession is not respected, or divorce is permitted. May a Catholic judge pass sentence in accordance with such laws as these?

The judge may sometimes obtain permission to pass sentence according to a law which is unjust merely because it is against the laws and rights of the Church. In order to make the position of Catholic judges tenable the Church will sometimes cede her rights in such cases or grant jurisdiction to try a case which of itself belongs to the ecclesiastical courts. Thus Cardinal Gasparri deduces from a decree of the Holy Office, December 19, 1860, that jurisdiction has been granted to judges in England to try cases where there is question of judicial separation of married people.[1]

If the law commands what is contrary to the natural or divine law, as for example, to give evidence as to what has been declared in confession, it is intrinsically wrong to obey such a law, and no Catholic judge may apply it.

If the unjust law only imposes a fine or imprisonment, some theologians maintain that even then it may not be applied by a Catholic judge. Others, however, hold that for grave reason, as for example, if no Catholic could

[1] Gasparri, de Matrim. 2, n. 1165.

otherwise accept the office of judge, sentence may be passed according to such a law. The person unjustly condemned must patiently submit for the public good, especially as he would not escape even if Catholic judges refused to execute the law.

The unjust sentence of a judge imposes no obligation in conscience, and of course the aggrieved party may have recourse to all available remedies which the law allows for redress. If none is available the public good will usually require patient submission to the wrong. If there is a doubt about the justice of a sentence presumption favors the judge, and obedience must be yielded, as in the case of a just sentence, which has the force of the law which it applies.

5. What has been said concerning the moral obligations of judges is applicable in due proportion to those who have similar functions, such as arbitrators, referees, and jurymen. An arbitrator differs from a judge in that he is chosen by the parties to the dispute to settle their claims. If the submission to arbitration and the decision of the arbitrator be in writing, the sentence is final, and will be upheld by English courts unless it is evidently corrupt or obtained by unlawful means.

Referees are officials or experts to whom the court entrusts some special question for inquiry or decision, and sometimes the cause itself, if it be complicated, and not suitable for trial in the ordinary way. They are bound to act according to the terms of their commission and the rules drawn up for their guidance. The report or award of a referee, unless set aside by the court, has the force of a jury's verdict.

A jury is a body of men selected and sworn to inquire

into certain matters of fact, and to declare the truth upon evidence to be laid before them. They are therefore bound to form the best judgment in their power as to the facts of the case laid before them and truthfully and fearlessly to give their verdict. If any one of them has any private knowledge of the facts of the case he is not precluded from communicating it to the others, and he should do this if justice or charity require it.

CHAPTER II

ON THE DUTIES OF ADVOCATES

1. An advocate is one who undertakes to assist litigants by his advice and help and by pleading their case before the judge. For the purposes of moral theology we may neglect the technical differences between barristers and solicitors in English law.

As the advocate acts in the name of his client he may in general do what his client is allowed to do, and he must not do what it would be wrong for his client to do. He may not undertake a cause which is manifestly unjust; otherwise he will be guilty of sin, and bound to make restitution for all the damage that he causes. If in the course of the trial it becomes manifest that his client's cause is a bad one, he must inform his client of the fact and refuse to proceed with the case. However, it is not necessary that the advocate should be certain that his client is right; it will be sufficient if his cause is probably just, for it may be expected that the doubtful rights of the parties will become clear in the course of the trial. In a criminal action the advocate may always defend the accused by lawful means whether he be guilty or not. If he is guilty, the defence of his advocate cannot do any serious harm and will at least help toward the merciful administration of justice. The prosecution of an accused

person may not be undertaken unless his guilt is practically certain, for otherwise there will be danger of injuring the character of an innocent person and of exposing him to vexation without just cause.

From the decree of the Holy Office, December 19, 1860, in answer to the Bishop of Southwark, it is clear that in England an advocate may undertake a case where there is question of judicial separation between husband and wife. Even in an action for divorce in a civil court he may defend the action against the plaintiff. If the marriage has already been pronounced null and void by competent ecclesiastical authority, a Catholic advocate may impugn its validity in the civil courts. Moreover for just reason, as, for example, to obtain a variation in the marriage settlement, or to prevent the necessity of having to maintain a bastard child, a Catholic lawyer may petition for a divorce in the civil court, not with the intention of enabling his client to marry again while his spouse is still living, but with a view to obtaining the civil effects of divorce in the civil tribunal. This opinion at any rate is defended as probable by many good theologians. The reason is because marriage is neither contracted nor dissolved before the civil authority; in the formalities prescribed for marriage by civil law there is only question of the civil authority taking cognizance of who are married, and of the civil effects which flow therefrom.

2. With reference to the duties of the advocate toward his client, he must of course have the requisite knowledge and skill to undertake the case according to the reasonable expectations of his client, and he must exercise due care and diligence in the execution of the duty which he has undertaken. If in these respects he is culpably negli-

gent, he will be guilty of injustice, and bound to make restitution for the harm he does. Furthermore, if his client has no case, and no chance of success in the suit, the advocate must make this known to him; he must avoid useless delays, keep the strictest faith with his client, and use only just means to gain his cause.

English law will not enable a barrister to institute legal proceedings for the recovery of his honorarium if it is withheld. This, however, does not prevent the obligations of a contract existing between an advocate and his client, so that as the former is bound in justice to do his part for the latter, so is the client bound in justice to recompense his lawyer according to the terms which were explicitly or implicitly agreed upon. With regard to solicitors the law sufficiently provides against extortion in the matter of fees.

By the general law of charity a lawyer should be prepared to give his assistance for the love of God to the poor who cannot pay the usual fees. Indeed, if an accused person has no one to defend him, the judge will usually request some one to undertake the office.

English solicitors frequently fulfil the functions of notaries public, and as such receive all acts and contracts which must, or are wished to be clothed with an authentic form, confer on such acts the required authenticity, establish their date, and prepare and attest instruments going abroad.

CHAPTER III

ON PROSECUTORS, DEFENDANTS, AND WITNESSES

1. THERE are other persons connected with the administration of justice besides judges and lawyers, and they have special moral obligations of their own. A word must be said about the moral duties of prosecutors, defendants, and witnesses. By canon law excommunicated and infamous persons, accomplices, and others are debarred from prosecuting criminals, but as a general rule any one who has full use of his senses may prosecute according to English law. Nobody should undertake a prosecution when greater evil than good would follow from it, or when there is not moral certainty as to the guilt of the accused. Otherwise it may be done for the sake of the public good, and there may be an obligation to do it, as when one's office compels one to undertake the task, or the defence of the innocent or the public good require it, or a precept of obedience command it. Thus by ecclesiastical law heretics and priests guilty of solicitation in the sacred tribunal are to be denounced to the Ordinary.

2. The defendant in a criminal trial is not himself subjected to examination according to English law, unless he offers himself voluntarily to give evidence, and then he may be examined like a witness. In canon law the accused is examined, and the question arises whether he is bound

to tell the truth against himself. He is bound to tell the truth if he is interrogated according to law, and canon law prescribes that when there is *semiplena probatio* of the crime and this is made clear to the defendant, he should be interrogated.

The defendant may in self-defence make known the secret crime of a witness against him, if it really conduces to his defence; but of course he may never impute false crimes to anybody. A criminal may not defend himself against lawful arrest, for that would be to resist lawful authority, but he is not compelled to deliver himself up to justice, and it is not a sin to escape from justice if he can do so without violence. The law prescribes that he shall be kept in durance, not that he shall voluntarily remain in custody. A criminal lawfully condemned to death is not obliged to save his life by escape or other means if he can do so; he should submit to the execution of the sentence passed upon him, and may do so meritoriously.

3. Charity or obedience may impose an obligation to give evidence in a court of justice. If serious harm can be prevented by offering one's self as a witness, there will as a rule be an obligation to do so, and obedience imposes the obligation when one is summoned by lawful authority.

A witness is bound by his oath and by obedience due to lawful authority to tell the truth in answer to the questions lawfully put to him. How far he is privileged when examined concerning what he knows under secret, we saw when treating of the Eighth Commandment of the Decalogue. He is not bound to incriminate himself, nor, of course, may the seal of confession ever be broken.

The canon law laid it down that two witnesses of un-

suspected character were necessary and sufficient evidence of any fact alleged in a court of justice. A solitary witness was not usually sufficient or admissible evidence of a crime, and in keeping with this the theologians decided that a solitary witness should not declare what he knew of a crime, inasmuch as he was not lawfully interrogated. English law, however, with most modern systems, admits one witness, if credible, as sufficient evidence of a fact, and so as a rule there will be an obligation on such a one of answering according to his knowledge when questioned lawfully in a court of justice.

CHAPTER IV

ON THE DUTIES OF MEDICAL MEN

1. A DOCTOR who holds himself out as ready to undertake the care of the sick must have competent knowledge of his profession and must exercise his office at least with ordinary care and diligence; otherwise he will sin against justice and charity in exposing himself to the risk of seriously injuring his neighbor. Unless he is bound by some special agreement he is not ordinarily obliged to undertake any particular case, for there are usually others who are willing and able to give the necessary assistance to the sick. Even in time of pestilence he will not commit sin if he leave the neighborhood, unless he is bound to remain by some special contract. Of course one who acted thus would show a mean spirit, and would be justly reprobated.

2. He should not make exorbitant charges for his services, nor multiply visits uselessly and thus increase his fees, nor call in other doctors without necessity. On the other hand, even at his own serious inconvenience, he should visit a patient whose case he has undertaken when called as far as is reasonable, and he should be ready to call in other doctors for consultation when necessary or when he is asked to do so. He is sometimes bound by the general law of charity to give his assistance gratis to the poor who cannot afford to pay the usual fees.

3. He may not neglect safer remedies in order to try those which are less safe, but there is nothing to prevent him from prescribing what will probably do good if it is certain that it will not do harm. In a desperate case, with the consent of the sick person and of his relations, he may make use of what will probably do good though it may also probably do harm, provided that there is nothing better to be done in the circumstances. It is altogether wrong to make experiments with doubtful remedies or operations on living human beings, *fiat experimentum in corpore vili.*

What has to be said of craniotomy and other similar operations, the use of morphia, hypnotism, and other dangerous remedies, are questions which have been treated elsewhere.

4. When the patient is in danger of death, the doctor is bound out of charity to warn him or those who attend on him of his danger, in order that he may make all necessary preparations for death if it should come about.

Part II

ON THE SPECIAL DUTIES OF CLERICS

CHAPTER I

ON HOLINESS OF LIFE

1. The sacredness of the duties which a cleric has to perform, and especially the service of the altar, require in him an internal holiness so that he may perform his duties worthily. "Let them therefore be holy, because I also am holy, the Lord, who sanctify them." [1] This holiness must show itself in the exercise of all Christian virtues so that the cleric may be an example to those whom he is called upon to instruct and guide on the way to heaven. As the Council of Trent said: "There is nothing which is so constant a lesson in piety and the worship of God as the life and example of those who have dedicated themselves to the divine service. For since they have been taken from worldly affairs and placed in a higher position, the faithful look upon them as models for their imitation. And so it becomes the clergy who have been set aside for the service of God, so to order their lives and morals that in their dress, demeanor, walk, speech, and everything about them, nothing may be seen but what is serious, modest, and breathes the religious spirit. Let them avoid even slight defects, which in them would not be slight, so that their actions may win the veneration of all." [2]

[1] Levit. xxi. 8. [2] Sess. 22, c. 1, de Ref.

This holiness of life is very frequently inculcated on the clergy in the councils and synods.[1]

Their occupations if worthily performed are means of sanctifying them and uniting them with God, and, moreover, the Church does what she can to secure the same end by prescribing the daily recitation of the divine office, and spiritual retreats at stated times.

2. Great personal sanctity becomes the cleric, and is required if he is to perform his duties worthily. It is a disputed question among theologians whether the inferior clergy are as such in a state of perfection. It is allowed by all that Bishops are in the state of practising perfection, inasmuch as they are in a permanent condition of life which is devoted to procuring the sanctification of those committed to their charge. Religious, too, by their vows assume the obligation of aiming at perfection, and in religious life find the means of acquiring it. Both Bishops and religious then are in the state of perfection. St. Thomas and many other theologians deny that the secular clergy inferior to Bishops are in the state of perfection, properly so called. The chief reason is because their condition of life has not the permanence required for a state in the technical sense, and although they are occupied in laboring for the sanctification of others, like Bishops, yet they do this rather as officials and helpers of Bishops, not entirely in their own name and of their own authority. As the learned Suarez admits, the controversy is rather about words than things, and we may accept his conclusion that because the higher secular clergy are bound by vow to continence, and partake also in the duties of Bishops, they may be said to be in an inchoate state of acquiring and practising perfection.[2]

[1] 1 West. d. 24; 4 West. d. 12. [2] Suarez, de Rel. 3, lib. 1, c. 17.

CHAPTER II

THE CELIBACY OF THE CLERGY

1. The celibacy of the clergy rests on a positive enactment of ecclesiastical law which, nevertheless, supposes the doctrine of Christ and His apostles about the excellence of virginity and its superiority to marriage. From the first ages of the Church it was felt that there was an incongruity between the Christian priesthood with its duties of offering up the Eucharistic sacrifice and of whole-hearted devotion to the service of God, and the use of marriage. The example of Our Lord and the counsels of St. Paul told powerfully in the same direction. Already in the fourth century the law of celibacy existed which was formulated by Leo the Great in his letter to Anastasius written about the middle of the fourth century: "Although," he says, "those who are not clerics may freely give themselves to marriage and the procreation of children, yet for the exhibiting of perfect chastity marriage is not allowed even to subdeacons, so that those who have wives should be as those who have them not, and those who have them not should remain single." All the more stringently, he goes on to say, does the same law bind the higher clergy, deacons, priests, and bishops. This law was frequently inculcated by subsequent Popes, re-enacted in many ecclesiastical synods, and at latest in the Second

Council of the Lateran (1139) marriage of the higher clergy was prohibited under pain of nullity. By ecclesiastical law, then, clerics in sacred orders are bound to observe perfect chastity, and marriage attempted by them is null and void. This law is known to all who aspire to sacred orders, and so those who choose the clerical state voluntarily embrace the law of continence. Indeed a vow of perfect chastity is by ecclesiastical usage annexed to the reception of sacred orders, so that all who are ordained subdeacons, by the very fact of receiving ordination, take a solemn vow of chastity. The discipline of the Eastern Church is somewhat milder. Clerics belonging thereto may marry before the reception of sacred orders, and if they have already done this they may keep their wives, except Bishops. Even in the East clerics in sacred orders cannot contract a valid marriage.

2. There is a dispute among theologians as to whether the obligation of celibacy, which binds clerics in sacred orders, should be ascribed immediately to ecclesiastical law or immediately to a vow of chastity tacitly taken when sacred orders are received according to the precept of the Church. The question is not of great practical importance, for in any case the obligation of celibacy is derived ultimately from ecclesiastical law, which binds all clerics in sacred orders to the observance of perfect chastity. The violation of such a law at any rate by external act is not morally different from a violation of a vow of chastity. The more common and more probable opinion is that the obligation of celibacy is derived immediately from a vow of chastity which every subdeacon takes tacitly according to the precept of the Church when he receives the first of the sacred orders. Tacit profession even of the essential

vows of religion was admitted in certain cases until it was altogether abrogated by a decree of Pius IX dated June 12, 1858. Boniface VIII decided that the vow of chastity thus tacitly taken by subdeacons is solemn, and that it annuls subsequent marriage if attempted.

A man who was married but whose wife is dead or lawfully divorced may be promoted to sacred orders. If the wife be still living and not divorced the husband cannot be promoted to orders without the voluntary and express consent of his wife, who, even if she consents, must herself take a vow to live chastely. She is not bound to enter religion unless her husband becomes a Bishop, or unless she is young and her husband becomes a religious.

CHAPTER III

THE CLERICAL DRESS

1. Ever since about the sixth century clerics have had a special dress of their own to distinguish them from laymen. It is their uniform, like that of soldiers or sailors, and is a perpetual reminder to them that they should always conduct themselves as becomes their profession. At first the clerical dress was introduced by custom, and then sanctioned by positive law. On this point the Council of Trent (sess. 14, c. 6, de Ref.), after saying that although the habit does not make the monk, yet clerics must always wear the dress suited to their order, so that by the decency of their dress they may make manifest the goodness of their moral character, goes on to prescribe under pain of suspension that all in sacred orders and beneficed clerics should wear the clerical dress suited to their order and dignity, according to the ordination and command of their Bishop.

The common law of the Church therefore imposes on beneficed clergy and on all in sacred orders the obligation of wearing the clerical dress, and it leaves to Bishops the task of making further regulations on the point suitable to the circumstances of the country. In England, the Fourth Synod of Westminster (d. 11, nn. 12–14) decreed that the Roman collar was always to be worn, that the dress

must be of black or dark material, and that in the house or church the cassock should be worn. The Third Plenary Council of Baltimore (n. 77) made the same regulations for the United States, except that the wearing of the cassock in the house or in the church is prescribed, not merely declared to be especially becoming.

2. The clerical tonsure is also prescribed by the common law of the Church, but it has not been reintroduced into England since the Reformation, nor is it in use in the United States. However, the obligation of not wearing hair on the face is laid down in the Fourth Synod of Westminster. (l. c.)

3. These laws of themselves bind under pain of mortal sin which, however, would not be committed if there were good cause for doing what they forbid, nor if they were neglected without contempt or grave scandal for a short time. Theologians consider that the clerical dress would have to be neglected for more than three or four days in order to sin grievously, and a much longer time would be required for a grave violation of the law concerning tonsure. Venial sin, of course, is committed by breaking the law without legitimate excuse even for a short time.

CHAPTER IV

THE DIVINE OFFICE

1. All who are in sacred orders, all beneficed clergy, and all religious orders which have solemn vows and keep choir, are bound every day to recite the divine office, otherwise called the canonical Hours, or the breviary. Positive ecclesiastical law certainly imposes this obligation on beneficed clerics, and some authorities derive the obligation as it affects those in sacred orders and religious from the same source. However, according to the common opinion, as Benedict XIV testifies,[1] there is no express law which imposes this duty on these latter; the obligation, under which they certainly lie, is derived from immemorial custom, which has the force of law.

The obligation of saying the office begins for secular clerics with the reception of the subdiaconate, or the lawful and full possession of their benefice. The obligation as it affects religious is primarily incumbent on the superior, whose duty it is to provide for the saying or singing of the divine office under pain of grave sin. Each religious is bound to assist in choir unless lawfully excused, and if one who is solemnly professed is absent he must recite the office in private. Religious under simple vows should be present

[1] Const., Eo quamvis tempore, May 4, 1745.

in choir, but if they failed to be present they are not obliged to say the office in private, unless of course they be in sacred orders.

2. The obligation of saying the divine office for all who are bound by it is grave, so that a mortal sin is committed by wilfully and without lawful excuse omitting it, or any considerable portion of it. According to theologians, one of the little Hours or any portion of the same length is to be reckoned considerable, so that its culpable omission will be a grave sin. Anything less than this will be only venial. A beneficed cleric not only sins by neglecting his office, but he loses his right to a proportional amount of the fruits of his benefice, and if he has already received that amount he must restore it to the Church or to pious causes.

When two or more say the office together the psalms may be said in alternate verses, one side listening while the other is reciting its verse. The rest listen while the lessons are said or sung by those appointed to the task.

3. Although the canonical Hours as said at different periods and in different churches have always been much the same in substance, yet in many details there has been considerable variety. Pope Pius V desired to introduce greater uniformity in the method of saying the divine office, and for this purpose he issued the Roman breviary, and made its use obligatory on all who were bound to the office under pain of not satisfying their obligation. He abolished the use of other breviaries with the exception of such as dated back more than two hundred years. The divine office, therefore, must be recited according to the form of the Roman breviary, and in Latin, the liturgical language of the Church.

Offices proper to particular countries, dioceses, and

religious orders, are allowed to be inserted in the breviary and said only by the authority of the Apostolic See, and when a proper office has been thus granted it becomes obligatory on the grantees unless it was expressly conceded as permissive.

Pius V took away the obligation, which existed according to the rubrics of the breviary, of reciting the Little Office of the Blessed Virgin, the penitential and gradual psalms, and the office of the dead; but though he took away the obligation, still he exhorted those bound to the divine office to recite them, and granted indulgences to such as followed his exhortation. By custom, the office of the dead is still obligatory on November 2, as also the recitation of the Litany of the Saints on the feast of St. Mark, and on the rogation days.

4. The office to be said on any particular day is indicated in the calendar drawn up and approved by the proper authority. It is a matter of obligation under pain of venial sin to adhere to the calendar, even if it seem to be wrong, unless it is manifestly against the rubrics or decrees of the Sacred Congregation of Rites. A reasonable cause, however, even though it be not a very grave one, will suffice to excuse the substitution of one office for another. If a wrong office has been said by mistake or inadvertence, there is no obligation to say the correct one; but if this is notably longer, some portion should be said to make up the difference.

The calendar to be followed is that of the church, diocese, or religious order to which one belongs. If absent from one's place of domicile for a time, the general rule is that one's own calendar should be followed; but in the case of regulars who recite the office in choir, a regular living for

a time in another monastery should conform to the calendar of the place where he resides.

5. In each day's office the order of the Hours should be observed at any rate under pain of venial sin. But here also any reasonable cause of some weight will excuse the saying of the Hours out of their proper order. If the time has arrived for anticipating matins and lauds for the next day, these may be said without any special reason even though the office of the day has not yet been finished, for each day's office is independent of any other.

6. The divine office is a vocal prayer imposed on the clergy by the Church. It is not sufficient to run over it with the eyes, or mentally; the words must be uttered and formed without mutilation by the lips, though it is not necessary to produce an audible sound. The different Hours must be said without interruption as one continuous prayer under pain of venial sin, from which any reasonable cause will excuse. The recitation may be interrupted between the several Hours, between matins and lauds, and for the space of a few hours even between the nocturns of matins. Provided that the whole office be said within the natural or ecclesiastical day, whatever interruptions may have taken place, the obligation will be substantially fulfilled, and when an interruption has been made within an Hour, or even in the middle of a psalm or lesson, there is no obligation to repeat what has already been said.

7. As was said above, the divine office is the task of the day, and provided that the whole of it is said within the day, reckoning from midnight to midnight, the cleric will have fulfilled his duty substantially so as to be excused at least from mortal sin. The rubrics, however, which

in this matter bind under venial sin, assign certain times of the day for the saying of the office. Matins and lauds should be said before Mass, prime and terce should be said before midday, sext and none are said in the interval between midday and vespers, vespers and compline are said when the sun is midway between the zenith and sunset. All the little Hours may be said before midday, and during Lent, beginning with the first Sunday, vespers are also said before midday.

Matins and lauds of the following day may be anticipated on the previous evening. The normal time for anticipating begins with the hour of vespers, but a special privilege is often granted by which matins and lauds of the following day may be begun at two P.M. throughout the year. Indeed, there does not seem to be any necessity for a special grant, for a custom has been introduced, by the very common practice of good priests, of anticipating throughout the year after two o'clock. A cleric may safely follow this custom.

Permission to anticipate is a privilege which no one is bound to use; the obligation of the day's office only begins at twelve o'clock.

The breviary contains rubrics directing that certain prayers be said on bended knee; these rubrics, however, do not bind when office is said privately out of choir. In private the office may be said in any place or in any position that is compatible with the due reverence to God which should be shown in prayer.

8. The obligation of saying the breviary is imposed by ecclesiastical precept, and the question arises what internal dispositions are necessary while reciting the office in order to satisfy the positive precept of the Church. Does one

who is voluntarily distracted while saying the office satisfy his obligation, or must he repeat what he said with voluntary distractions? It is not a question of what is required that prayer may be pleasing to God — voluntary distractions while praying are certainly venial sins — but the question is, what sort of attention is required by the law of the Church under pain of not fulfilling the obligation imposed by the law?

Attention, which is an act of the mind adverting to what is being done, must be distinguished from intention, which is the will to do something. At least, a virtual intention to say the office is required that the act may be voluntary, such as the law prescribes. Theologians distinguish between internal and external attention. The former consists in directing the mind to God, or in thinking of the sense of the words uttered, or in being careful to pronounce them correctly, and it is certain that any of these forms of internal attention is sufficient to satisfy the precept. External attention means the abstaining while engaged in prayer from any external occupation which is incompatible with internal attention. Thus one who curiously examines a painting while praying, or intently listens to what some one is saying, has not external attention.

It is a disputed point among theologians whether this external attention is sufficient in order to satisfy the precept of saying the office, or whether there must be in addition internal attention. In other words, they dispute whether one who is voluntarily distracted but apparently devout while saying the breviary satisfies the law, or whether he must repeat what he has said with wilful distractions.

Although, of course, all should strive after internal

attention, and sin is committed if voluntary distractions are admitted while praying, yet it is probable that external attention is sufficient to satisfy the positive law of the Church. For the Church does indeed prescribe prayer, but there is prayer in a real sense when one says the breviary with the intention of fulfilling his obligation, and with decorum and a devout demeanor, even though he is thinking of something else the while. If voluntary distractions destroy the essence of prayer, involuntary distractions will do so likewise, and yet it is impossible to avoid involuntary distractions altogether. This milder opinion is especially of use in order to calm scrupulous and anxious souls.[1]

9. As the obligation of saying the divine office arises from positive law, it does not bind when it would entail serious inconvenience. On this ground one who is sick, or who cannot say his office without causing a serious headache, is excused. Moreover, other occupations, undertaken for the good of our neighbor and which cannot be neglected without his loss, will be a sufficient excuse for omitting the office, when both duties cannot be fulfilled. And so missionaries, who are all day long occupied in hearing confessions and preaching, are excused from the office which would interfere with their work. Even when there is not a sufficient cause to excuse of itself from the law, a dispensation may be lawfully obtained from the competent authority, if there be good cause for it. The Pope can grant a dispensation to any cleric, a Bishop can dispense in particular cases with those of his diocese, and a regular prelate has similar powers for his own subjects. Wider powers are also granted as a special privilege by the Holy See. The faculty of saying fifteen decades of the

[1] Lugo, de Eucharist. 22, n. 25.

rosary instead of the office is frequently granted to missioners who are lawfully prevented from saying the office. The meaning of which is that there must be some difficulty in getting in the office, but it need not be so great as would of itself excuse altogether from the obligation. Inasmuch as the office is composed of several portions which are usually said separately, there will be an obligation to say any such portion if it can be done without serious inconvenience, even though it be impossible to say the whole.

CHAPTER V

ON THINGS FORBIDDEN TO CLERICS

1. In general, clerics are forbidden to do anything which is unbecoming their state of life or which interferes with the due discharge of their duties — "No man being a soldier to God, entangleth himself with secular businesses," says St. Paul (2 Tim. ii. 4). They are expressly forbidden to be innkeepers, butchers, surgeons, or to plead in the civil courts, except in their own cause, that of their Church, of near relations, or of the poor. A priest may not undertake the office of guardian to a ward, except with the Bishop's permission, nor the administration of temporal affairs, nor any office which renders him liable to account for money spent or received.

No cleric may bear arms or act as a soldier, except in case of necessity for the purpose of defending himself or his country when it is in peril. In countries where the civil law insists on clerics joining the army, they are also excused on the ground of necessity.

Hunting with horses and dogs is forbidden to clerics, and often to indulge in it would be gravely sinful. They are allowed to shoot.

2. Priests should also abstain from all scenes that are unbecoming their character, from public dances, and from unlawful games. All games of chance used to be for-

bidden to the clergy, but modern custom has somewhat mitigated the prohibition, so that now what is forbidden is gambling in public to the scandal of others, or to the loss of their own time. Going to the theater is very commonly prohibited to clerics in sacred orders by modern provincial or synodal decrees. Thus, the Fourth Council of Westminster enacted as follows: "We strictly prohibit ecclesiastics who have received sacred orders from being present at stage representations in public theaters, or in places temporarily made use of as public theaters, under the penalty to transgressors of suspension to be incurred *ipso facto*, such as has hitherto been the rule in all parts of England with reservation to the respective ordinaries."

NOTE. — There is no penalty of this kind imposed by any general legislation for the United States. The Third Plenary Council of Baltimore (n. 79) prohibits priests from attending theaters: "*Mandamus ut sacerdotes a publicis equorum prorsus abstineant cursibus, a theatris et spectaculis;*" but there is no censure attached to the violation of this law. — END OF NOTE.

Private theatricals, therefore, are not forbidden, nor plays given by mere children even in a public hall; custom at least so interprets the law in England.

3. In order that the name of the clergy may be untarnished and above suspicion, they are forbidden to live under the same roof or to be familiar with women of doubtful character. There is no absolute prohibition against having women in the priest's house, but the women who are admitted should be above suspicion, and there is a presumption in favor of female relations to the second degree, and of those who are at least forty years of age. On this matter

the Fourth Council of Westminster decreed as follows: "Women should not live in a priest's house without leave of the ordinary. Schoolmistresses also and pupil teachers should be strictly forbidden ever to live in any presbytery with the priest, unless for some reason known to the Bishop and approved of by him in writing; for these being by their intelligence and education more refined are more exposed to the tongues of calumniators. 'But the women who act as servants in the presbyteries should be of advanced years, well-known for their modesty, prudence, and irreproachable lives, so that the prescriptions of the canons may be kept.'" [1]

The effect of this decree, which at first sight seems to be more severe than is the common law of the Church, is, it would seem, to give to Bishops the right when circumstances require it to object to the presence in a priest's house of any particular female, which they may do without being obliged to prove positive indiscretion.

4. Clerics in sacred orders and all religious are forbidden to trade. Mere buying and selling of commodities for consumption is not forbidden, but trading in the strict sense, which is defined as buying commodities with the intention of selling them at a higher price without changing their nature. So that it is not illicit trading to sell the produce of one's land or animals, nor to sell what one bought with the intention of consuming it, but which was found unsuitable, nor to sell retail to the poor at the same price as one gave, nor to sell a picture painted by one's self with colors which had been bought. Certain transactions, however, which have the appearance of trading are also forbidden. Thus it is unlawful for a cleric to buy raw

[1] d. 11, n. 3.

material to be manufactured by hired labor and then sold for gain, as also to buy cattle and fatten them for sale on rented land. Benedict XIV declared that trading by an agent was forbidden as well as trading one's self.

Such trading as has been described is forbidden to clerics and religious by positive ecclesiastical law, and to some extent by natural and divine law; for as St. Paul wrote to Timothy, "No man being a soldier to God, entangleth himself with secular businesses." [1] Trading would interfere too much with the sacred duties of clerics and religious and would absorb too much of their thoughts and interest. It is not, then, that the Church thought trading for gain sinful that clerics are forbidden to engage in it. According to the doctrine of St. Thomas, trade merely to get richer, without any higher motive to ennoble it, is indeed base and blameworthy, but it is not vicious or sinful.[2] There is no objection to clerics investing money in government stock, or in buying the bonds of some honest enterprise; in doing this they merely buy a right to receive so much interest for their capital. It would of course be illicit trading for them to buy stock with the intention of selling out at a profit when the price rises. This and other forms of speculative gambling in stocks are forbidden to clerics. Whether or not it is forbidden to clerics to have shares in industrial or commercial companies is a disputed point among theologians. It seems more probable that, unless they become acting directors of the company or take some other active part in managing its affairs, clerics who take shares in a company of either sort are not to be condemned. For under these restrictions there is little difference between having one's money in government stocks and in indus-

[1] 2 Tim. ii, 4. [2] 2-2, q. 77, a. 4.

trial or commercial companies. In the latter case, as in the former, his share in the business is practically confined to receiving his dividends as they become due.

5. The law against trading binds under pain of grave sin whenever the matter is sufficiently considerable. However, inasmuch as trading implies a habit, to buy and sell for gain once in a way even in considerable quantity would not in the judgment of divines of authority be a grievous sin.

Missioners in the East Indies and in America are forbidden to trade by special and stricter laws than that which binds all clerics. They sin grievously by buying and selling for gain even once in a way, and they incur the penalty of excommunication together with the loss of the merchandise and the gain which they made by the transaction.

As necessity knows no law, a cleric would not sin who traded in order to obtain what was necessary to support himself or his near relations. With the leave of the Bishop he might, by trading, eke out what was wanting for his decent support.

CHAPTER VI

ON BENEFICES

1. Mention has several times been made already of benefices, and in this place moral theologians usually treat of the special obligations in conscience of beneficed clergy. In Britain and in the United States there are few benefices; the ordinary missions at least are not benefices, and so it is hardly worth while to discuss the special obligations of beneficed clerics here. It will, however, be useful to explain what a benefice in the strict sense is, and then allusions to the matter will be better understood, and the reasons why there are few benefices in Britain and in the United States will be clear.

A benefice is defined to be a perpetual right constituted by ecclesiastical authority belonging to a lawfully instituted cleric to receive the income of ecclesiastical property on account of a spiritual office which he holds.

The right to receive the income is perpetual because it does not cease with the life of the present holder, but after his death it must be conferred on others who have been lawfully instituted. Moreover, a beneficed cleric once lawfully possessed of his benefice cannot be deprived of it without canonical cause and process. Regarded objectively, this right is frequently called a prebend. The income from Church property must be definitely assigned to

a cleric who holds some spiritual office, and this can only be done by the Bishop or by a higher ecclesiastical authority. A pension paid by a gentleman to his chaplain is not a benefice. Only a cleric instituted according to the law of the Church can legitimately hold a benefice, for on account of the office annexed to it it is a spiritual right, and the income of ecclesiastical property should only be devoted to Church purposes. The beneficed cleric is the administrator of the Church property from which his income is derived; he becomes the owner of the income when it comes into his possession, but by ecclesiastical law he is bound to spend any surplus which is not necessary for his own support on pious causes or on the poor.

Benefices are variously divided into greater, such as the Papacy and bishoprics, and lesser, as parishes; into double, which have jurisdiction or preeminence or administration or the cure of souls annexed to them; and single, as a chaplaincy; into secular, for the secular clergy, and regular for regulars.

2. Canonists distinguish six essential characteristics of a benefice: it must be erected by ecclesiastical authority; it must have some spiritual office annexed to it; it must be in the disposal of some ecclesiastical authority; it must be conferred on a cleric; it must be perpetual; and it must be conferred on another, not retained for one's self.

It is plain, then, that our quasi-parishes and other ecclesiastical offices have no title to the name of benefices. For they have not been formally erected into benefices by ecclesiastical authority; either they have no ecclesiastical property annexed to them from which an income could be derived, or it would not be sufficient for the purpose; clerics in these countries are for the most part supported

by the voluntary contributions of the faithful. Besides, missioners have only delegated jurisdiction, and they may be removed from their charge for other than the canonical causes which are required for the removal of a beneficed cleric. There is not, then, the required perpetuity even in the office of a missionary rector among us.

CHAPTER VII

ON THE SPECIAL DUTIES OF BISHOPS

1. The duties of Bishops of the Catholic Church are treated of at length in canon law; here we will touch upon the chief of them in so far as they affect conscience.

In order to be able to fulfil his various duties a Bishop must habitually reside within the limits of his diocese. It is a disputed point among theologians whether this obligation is derived immediately from the divine law or from the positive law of the Church. We may say that at least remotely and in substance it belongs to the divine law, for in detail it is determined by the positive law of the Church. The Bishop need not always live in the episcopal city, but he should be there to pontificate in the cathedral on the more solemn festivals of the year. Notwithstanding the obligation of residence the Council of Trent allows a Bishop to absent himself from his diocese for good cause for a period of two or three months every year, provided that he can do so without injury to his flock. His own conscience must decide what cause is sufficient to justify his absence. Besides these two or three months a Bishop may further absent himself if Christian charity, urgent necessity, due obedience, or the evident advantage of Church or State require it. But besides these reasons, in countries subject to the Sacred Congre-

gation of Propaganda, the leave of the Sacred Congregation is also required for longer absence than the two or three months mentioned above.

2. At stated times Bishops are bound to visit their dioceses in order to promote sound religious teaching and to correct errors in doctrine, to protect the good and punish the wicked, and to exhort the people to lead religious, peaceful, and good lives. They are specially bound to watch over the morals and discipline of the clergy, and that there may be a constant supply of zealous priests for the needs of the diocese they should have a seminary for the education of those whom God calls to the clerical state. Several dioceses may have a seminary in common if they are too small and poor to support a separate one for themselves. The care of sound Christian doctrine is specially entrusted to Bishops, and in the exercise of this charge they may visit public and private institutions, except such as are exempted from their jurisdiction, and they may condemn bad books not only by their ordinary authority, but as delegates of the Holy See in this important matter. They are bound at times to preach the word of God; every Sunday and day of obligation, even on the feast days that have been suppressed, they are bound to offer up Mass for the people committed to their charge; they should hold a diocesan synod every year, and make their visit *ad limina* at the fixed times, in order to render an account of the state of their dioceses to the Holy See.

CHAPTER VIII

ON THE DUTIES OF CANONS

1. The canons attached to a cathedral church form the council or senate by whose advice and help the Bishop is assisted in the government of the diocese. Collegiate churches were also served by a body of canons. By the common law, besides helping the Bishop in the government of the diocese, canons were bound to residence near the church which they served; they were bound to sing the divine office every day in choir, and in turn to celebrate the conventual Mass. When a bishopric becomes vacant the government of the diocese devolves on the chapter of canons, who must elect within eight days after the vacancy occurs a vicar capitular to administer the affairs of the diocese until the appointment of a new Bishop.

2. As there are either no prebends for the support of the canons in this country, or their amount is too small for the purpose, our canons have been dispensed by the Holy See from the obligation of residence near the cathedral and from the daily celebration therein of Mass and divine office. They are, however, still bound to assemble at the cathedral on some one day in every month to be designated by the Bishop, and on that day to sing office, say a conventual Mass, and hold a chapter. Similar provisions have been made in other missionary countries. In

the United States the place of canons is to some extent taken by the diocesan consultors.

NOTE. — The Second Plenary Council of Baltimore in 1866 recommended each Bishop to appoint some priests whose advice could be taken in the administration of his diocese; the Third Plenary Council in 1884 made the appointment of diocesan consultors obligatory (Decree n. 18). There ought to be six consultors, or at least four; if it is impossible to procure even this latter number, two may be appointed. Half the number of the consultors are to be appointed solely by the Bishop; the remaining half should be nominated by the priests of the diocese engaged in the sacred ministry, before being appointed by the Bishop. All the consultors are appointed for three years only, but may be reappointed for another term; none of them can be removed from his office against his will without the advice of the other consultors. There are seven cases set down in which the Bishop is required to procure the advice of his consultors: 1. Before holding a diocesan synod and before publishing its decrees; 2. When a mission or parish is to be divided; 3. When there is question of giving a parish to a religious congregation or order; 4. When appointing members of the board for the diocesan seminary; 5. When a new consultor is to be appointed, or synodal examiners; 6. Alienation of ecclesiastical property when the value exceeds $5000; 7. When there is question of imposing a new tax for the Bishop.

Besides the foregoing cases which are given in Decree n. 20 of the Third Plenary Council, there are five others in which the Bishops are required to seek the advice of the consultors. These may be found in nn. 33, 37, 38, 273,

and 294 of the same council. The consultors' meetings should be held four times a year, or if this cannot be done, at least twice a year, the Bishop himself presiding at each meeting. Besides, the Bishop may convene an extraordinary meeting of his consultors whenever he deems it advisable; and whenever a question requiring their advice is to be submitted, which cannot be considered at an ordinary meeting, an extraordinary meeting should be held. Cf. Third Plenary Council of Baltimore, n. 17–22: also Smith's Elements of Ecclesiastical Law (9th ed.) vol. 1, p. 491–520, where the writer treats at length of diocesan consultors as existing in the United States. — End of Note.

In diocesan matters of importance the Bishop is bound to ask the advice of his canons, and sometimes it is specially provided that he must obtain their consent to what he proposes to do.

Canons in England do not indeed elect a new Bishop, but the Holy See has granted them the right of commendation, which is exercised by electing three clerics whose names they send in alphabetical order to the Archbishop or to the senior Bishop if the vacancy occurs in the archbishopric. The Bishops then hold a meeting and after deliberation send the names with their remarks and opinions concerning the merits of each to Propaganda. The Holy See selects one of the three or some one else as it is judged more expedient.

CHAPTER IX

ON THE DUTIES OF PARISH PRIESTS

1. The parochial system is not an institution of the primitive Church, much less of divine origin. For some centuries it was usual for the Bishop to reside in some city with his body of clergy around him, some of whom were despatched as occasion required to minister to the faithful in outlying districts. In the fifth and sixth centuries parishes began to make their appearance in some places in the country districts, and in the eleventh, parish churches began to be instituted in the cities. Even at the period of the Council of Trent the parochial system had by no means become universal, but this council commanded that where churches had no fixed limits nor the pastors their own flock, and the sacraments were administered promiscuously to any who asked for them, the Bishops should divide the people into fixed and proper parishes and assign to each its perpetual and separate parish priest, who might know them, and from whom alone they might lawfully receive the sacraments.[1] It added indeed that they might provide in some better way as circumstances of place demanded.

A parish priest, then, may be defined as a lawfully deputed priest who, by virtue of his office, has the right and the duty in his own name to exercise the cure of souls of

[1] Sess. 24, de Ref. c. 13.

a certain number of the faithful in a certain portion of the diocese, and they in turn are bound to some extent to receive the sacraments from him.

As the parish priest has the right and the duty to exercise the cure of souls within his parish in his own name, he has consequently ordinary jurisdiction, not indeed in the external forum but in the internal. He cannot make laws nor impose censures, but he administers the sacraments in his own name and he is supposed to make use of other means to advance the spiritual good of his flock. The members of his flock on their side are bound to receive the parochial sacraments of Baptism, Extreme Unction, Marriage, the Easter Communion, and Viaticum, at his hands or from other priests by his commission. In former times they were obliged to hear Mass and the word of God preached in the parish church, and the parish priest received their confession; but custom has removed the obligation in these matters, and as yet in England the Easter Communion may be made in any church or public oratory.

NOTE. — What the author here says of England regarding the Easter Communion may be held also for the United States, with the probable exception of the province of San Francisco. The paschal precept imports that the faithful are bound to receive Holy Communion at Easter time in the parish church of their parish. If they have no parish, the precept cannot be fully complied with; but they remain obliged to receive Holy Communion within the prescribed time, viz., in the United States, from the first Sunday of Lent to Trinity Sunday inclusive. Now in this country there are no parishes strictly so called, as may be seen from the decrees of the Third Plenary

Council of Baltimore. Thus in n. 24 referring to the United States it is said "*Quamdiu parochiæ canonicæ erectæ non sint.*" Again in n. 33 certain missions given to irremovable rectors are designated "*ut parochiarum instar.*" Besides the Sacred Congregation of Propaganda consulting with the Archbishops of the United States declared in session (November 24, 1883): "*Pro nunc in America esse constituendos tantum rectores inamovibiles sicut in Anglia cum sola dote inamovibilitatis, absque juribus et privilegiis verorum parochorum.*" It is quite certain that subsequent to the celebration of the Third Plenary Council in 1884 canonical parishes have not been constituted in the United States. Accordingly the faithful in this country satisfy the paschal precept by receiving Holy Communion anywhere within the time appointed for the purpose, and indeed the first time a person receives Holy Communion after the paschal season has begun, *e.g.*, on the first Sunday of Lent, is a fulfilment of the precept, whether he have the intention of fulfilling it then or not; the reason being, because he does what the Church prescribes. It is not necessary here to discuss the question, whether a Bishop could or could not impose upon the subjects of his diocese a precept of receiving Holy Communion once a year within the limits of their respective missions or quasi-parishes, and even from the hands of their own pastors. If the affirmative view be held, which does not appear an improbable opinion, it would still be true that a person receiving Holy Communion outside his parochial district or even outside his diocese for the first time after the opening of the paschal season would thereby satisfy his obligation as far as it is possible to fulfil it in the United States.

It has been said that the province of San Francisco is probably to be excepted from the foregoing rule. The reason for this exception is founded upon a decree of the First Provincial Council of San Francisco in 1874, where the following words are used: "*Declaramus rectores earum parochiarum, quæ habentur uti parochiæ proprie dictæ, teneri ad omnia munera parochorum erga fideles intra limites suarum ecclesiarum constitutos adimplenda: fideles autem jus habere ad subsidia spiritualia ab illis ceu a propriis animarum rectoribus recipiendum, ac speciatim teneri ad ipsos recurrere pro communione paschali, baptismo, viatico, extrema unctione et matrimonio.*" From this decree it might appear that there are parishes in that province where the faithful are obliged to have recourse to their own proper pastors for their Easter Communion, as also that the pastors of such parishes are bound to perform all the duties of parish priests toward the faithful committed to them, among which is to be enumerated that of offering the special fruit of the Mass on Sundays and holydays for the parishioners. On the other hand there is some foundation for the opinion that even in the province of San Francisco there are no canonical parishes or parish priests. The Third Plenary Council of Baltimore, which was held ten years after the provincial council of San Francisco, refers, as we have seen, to the United States as a country where there are no canonical parishes without making any exception of the province of San Francisco: and the Congregation of Propaganda in 1883 had spoken in the same manner. Then the vicar general of San Francisco, who was present at the provincial council in 1874, declared afterward in 1889 that Archbishop Alemany, who presided at that council, did not think that there were parishes

properly so called in that province, nor that the rectors were strictly bound to apply the Mass for their people.[1] Hence while the words of the provincial council, approved or recognized *in forma communi* by the Holy See, would seem to indicate the existence of parishes, strictly so called, in San Francisco, there is no conclusive proof to this effect when we consider the words of the Propaganda, the Third Plenary Council of Baltimore, as well as the opinion of the Archbishop of San Francisco.[2] — END OF NOTE.

Parishes and parish priests exist in Ireland, but in Britain and in the United States instead of parish priests we have as yet only missionary rectors, or simple missionaries. These have only delegated jurisdiction; they rule their flock not in their own name but in the name of the Bishop, and they can be more easily removed than parish priests. They have, however, the cure of souls committed to them as parish priests have, and in general they have the same obligations derived from the nature of their charge and from ecclesiastical law. Where there is more than one priest serving a mission, the charge of the church, schools, presbytery, and people is entrusted chiefly to the rector. He does not grant and he cannot suspend the faculties of his subordinates, but he directs when and where they are to employ them. They are bound to undertake such work as the rector may assign them, whether in the church, the school, or the parish.

2. In order that they may be able to fulfil the duties of their charge and be always ready to help the faithful in their spiritual needs, parish priests are bound to reside

[1] Putzer's Commentary on the Apostolic Faculties (5th ed.), p. 173.
[2] Smith's Elements of Ecc. Law, vol. 1, n. 653–654.

in the church house or in some place near the church. This law was enforced by the Council of Trent[1] and it has been further determined in particular points by provincial law.

In the province of Westminster curates must give notice to the head priest if they wish to absent themselves even for a day. When there is another priest in residence the head priest may absent himself for a few days without acquainting the Bishop, provided that he has some good reason, that he takes care that it does not occur too frequently, and that he is not away on a Sunday or on a day of obligation. If he wants to be away on one of these days he must have the leave of the Bishop or of the vicar general in writing, except when the case is urgent, and then he must leave a suitable person as his substitute and give notice to the Bishop or to the vicar general as soon as possible.

For some good reason, and the need of relaxation is sufficient, a parish priest may, by the common law, absent himself from his charge for a period of two months every year. The exigencies of modern parish duties rarely permit of so long an absence every year.

Parish priests may be absent from their parishes for a longer period than the two months allowed by the common law when it is made necessary by Christian charity, urgent necessity, due obedience, and the evident advantage of Church or State. The approval of the Bishop is always required in these cases.[2]

3. All priests who have the cure of souls are bound to preach to their people on all Sundays and solemn feasts. If they are prevented from fulfilling this grave duty they

[1] Sess. 23, c. 1, de Ref. [2] St. Alphonsus, 4, n 119 ff.

must provide a substitute. The kind and manner of instruction should be accommodated to the people, teaching them what is necessary for salvation, inveighing against vice and inculcating virtue, so that the people may be able to avoid hell and gain heaven, as the Council of Trent lays down. Divines teach that a priest would sin grievously if he neglected this duty for a whole month together without reasonable excuse. Under the same obligation, and at least as frequently, parish priests are bound to give catechism to the children. Pius X, by his encyclical dated April 15, 1905, renewed this precept commanding that an hour be given to the duty every Sunday and holyday of obligation, that children should be prepared by special instructions for Confession, Confirmation, and first Communion, and that besides the usual sermon, the Catechism of the Council of Trent should be explained to the people on Sundays and holydays at a suitable time. The provincial synods of Westminster order catechism to be given by the priest in the school at least once a week, and in some dioceses this is ordered twice a week.

4. To be able to fulfil his duties towards the members of his flock a parish priest must know them, and he should not wait till they come to him; he should visit them and seek out those who have wandered from the fold. He is bound to correct the erring and to strive to recover them. He should also be able to devote some time to inquiring souls outside the fold. He should keep a book in which to enter particulars concerning the *status animarum* of those committed to his charge. He must be ready to administer the sacraments at the reasonable request of his parishioners, and he must say Mass in order that they may be able to fulfil their obligation of hearing it on the

days appointed. Indeed, the provincial synods express a desire that there should be Mass daily in the parish church, and it will be the duty of the priest to provide this wherever the faithful have been led to expect it, and frequent the church for the purpose. On all Sundays and holydays of obligation, even on those whose observance is no longer obligatory on us, parish priests in the strict sense are bound to apply Mass for their people. This obligation is personal and real at the same time, so that even if the parish priest be absent, he must on those days say Mass for his flock, and if he is prevented from doing so, he is bound to have a Mass said for that intention, or make it up afterwards. Our missioners, inasmuch as they are not true parish priests, are not strictly bound to apply Mass for their people, but the Sacred Congregation which decided this said also that it is becoming in charity to do as parish priests are bound to do.

CHAPTER X

ON PRIESTS WITHOUT SPECIAL CHARGE

1. The Council of Trent declared[1] that no one should receive ordination who was not, in the judgment of his Bishop, necessary or useful to the diocese, and it decreed that nobody should in future be ordained without being *incardinated* in the diocese for whose necessity or advantage he was taken, so that all priests may have occupation and may not wander about without fixed abode. It follows from this that even those who have been ordained on their patrimony are bound to serve the diocese for which they were ordained, and those who are ordained on the title of the mission are further bound to do the same by the oath which they take. Both should be ready to undertake that charge in the diocese which the Bishop lays upon them. By the promise of canonical obedience which they solemnly make to the Bishop at their ordination, priests bind themselves anew to obey the Bishop in all matters wherein he has authority according to the canons. These regulate his clerical life and prohibit him from leaving the diocese without the leave of the Bishop. If he does so, he may be suspended from the office of his ministry. Notwithstanding the missionary oath, the Bishops in England by mutual

[1] Sess. 23, c. 15, de Ref.

consent may transfer a priest from one diocese to another without recurring to Rome.

2. Before ordaining a cleric the Bishop should satisfy himself that the candidate is worthy and fit for the work of the sacred ministry. He must have the requisite holiness of life, without which the receiving of orders will only add to his greater condemnation. He must possess the knowledge necessary for the exercise of his duties, and he must be called by God. There is some apparent difference of opinion as to what precisely is implied by the necessity which all admit of a vocation from God to the clerical state. It is certain that no one may lawfully intrude himself into the ministry of his own accord. He must be duly approved and chosen for the work by the Bishop. According to the catechism of the Council of Trent the words of the epistle to the Hebrews are to be understood of this external vocation through the lawful ministers of the Church. "Neither," we there read, "doth any man take the honor to himself, but he that is called by God as Aaron was." [1]

It is commonly admitted that besides this external vocation by the lawful prelates of the Church in the name of God, an internal call is also necessary. To be consecrated to the service of God a man must have the requisite gifts of body, mind, and soul, and, moreover, he must be satisfied that it is the will of God that he should devote himself to the sacred ministry, and that he will be able to perform its duties worthily, and thereby save his soul. The will of God in such matters is made known in various ways. Sometimes it is as plain and evident as was the call of St. Paul on the road to Damascus. As a rule it becomes

[1] Heb. v. 4.

known by internal inspirations by which one is brought to think highly of the ministry, and by motions of the will by which one is drawn to desire it for the glory of God, the good of one's fellow men, and the salvation of one's own soul. To embrace the priesthood without the consciousness of any such divine call would be hazardous and rash, and it would be grievously sinful if there were no wish or no prospect of being able to fulfil the duties of the clerical state. On the other hand, if the motive for embracing the clerical life were not seriously wrong, and if there were the firm resolve to fulfil the duties of the priesthood faithfully, and a reasonable prospect of being able to do so, many approved divines consider that a person choosing the priesthood without a divine vocation would not sin grievously.

Divines discuss the question as to whether a cleric who has contracted a bad habit of secret sin would sin grievously by receiving sacred orders before he had overcome his bad habit. Some defend the view that he would do so, because he would violate the law of the Church which requires holiness of life in one who is admitted to sacred orders. Even if we admit with others that it is difficult to sustain this view, that the pontifical seems not to countenance it, yet in ordinary cases it expresses the correct opinion in practice, for commonly there will be little chance of a cleric living up to his profession who before ordination had contracted a vicious habit. Such a one undertakes more than he can fulfil and sins grievously against the natural, if not against the positive law. His confessor then would be justified in bidding him defer ordination till he has corrected himself, and enforcing his command with a threat of refusing absolution, except

in some extraordinary case of sudden and complete conversion.

By a decree, dated December 22, 1905, Bishops were forbidden to admit into their seminaries a layman or a cleric who had been in another seminary and had been dismissed as unsuitable for the priesthood. By the same decree they were forbidden to receive those who had been dismissed from a religious order without first secretly satisfying themselves by letter to the superiors that there was nothing in the morals or character of the candidate which was unbecoming the clerical state.

3. Divines also discuss the question as to whether priests are bound by the mere fact of their priesthood to say Mass at least sometimes, three or four times a year. There is indeed the obligation of receiving Holy Communion at Easter, which binds the clergy as well as the laity, but a priest is not bound to say Mass to satisfy this precept; he may receive Holy Communion like a layman. Although it would be difficult to point to any law which would be broken by a priest who never said Mass, unless it were to satisfy some extrinsic obligation as that of parish priest, still in practice a priest who never said Mass, though able to do so, would give grave scandal and thereby sin grievously.

Part III

ON THE SPECIAL DUTIES OF RELIGIOUS

CHAPTER I

ON THE NATURE OF THE RELIGIOUS STATE

1. We learn from the Gospels that, besides the ordinary way of the Commandments to be followed by all who wish to save their souls, Our Lord proposed the way of perfection to the select few who wished to follow Him more closely. This way of perfection consists in renouncing the goods of this world and the cares of family life, and following Our Lord's example of perfect obedience to the will of our heavenly Father. From the first ages of the Christian Church there were many who accepted Our Lord's invitation and lived in voluntary poverty and chastity. Comparatively few historical documents of the earliest centuries of the Christian era have survived, but we find traces of a body of ascetics and virgins to whom a place of special honor was assigned in the Church. At first they seem to have lived in the bosom of their families, but soon they fled to the deserts of Egypt, Syria, and Palestine, and for guidance and encouragement put themselves under the rule of some experienced hermit. Nothing was then wanting to the essence of the religious state except perpetual vows and a rule. When the counsels

[1] Matt. xix.

of perfection began to be practised under perpetual vow cannot be determined exactly; the first formal religious rules are the work of St. Basil and St. Benedict. Thus in its essence the religious state has been instituted by Jesus Christ, and, as historically evolved under the guidance of His Church, it may be defined as a fixed and stable way of life approved by the Church for the faithful who, under a certain rule and a common way of living, wish to aim at perfection by the observance of the three vows of poverty, chastity, and obedience, with the entire surrender of one's self to God. Thus those who devote themselves to works of piety and charity without vows, or with only temporary vows, are not in the religious state, nor are they technically called religious. They want the necessary stability. This stability is given by the profession of perpetual vows of poverty, chastity, and obedience, the chief of the counsels of the Gospel, by which a person renounces the attractions of this world which draw so many away from God, in order to give himself wholly and entirely without let or hindrance to the love and service of God. The Church has always watched over and fostered the practice of religious life. In the thirteenth century there was danger of the great variety of religious orders causing confusion, and the Fourth Council of the Lateran forbade any new orders to be founded. The practical effect of this law was to prohibit new orders without the approbation of the Holy See. It is still in force as regards orders with solemn vows, which cannot be founded without the special approbation of the Pope. According to the present discipline, orders with simple vows may be approved by Bishops, provided that they previously obtain the leave of the Sacred Congrega-

tion of Bishops and Regulars.[1] Such diocesan orders remain wholly subject to the Bishop of the diocese in which they have their residence. If an order with simple vows desires to acquire greater stability, it frequently applies to Rome for approbation. This is usually granted in stages if, after careful examination, it seems good to the Holy See, so that at first a decree is issued in praise of the end and scope of the new institute, and finally a decree of approbation. When the Holy See has taken the matter in hand, no Bishop can change the rules or constitutions of the order, nor can he interfere in the internal affairs of an order approved by Rome, except as provided in the constitution of Leo XIII, *Conditæ a Christo*, December 8, 1900.

The end of religious life is perfect union with God, in which man's perfection consists, and this union the religious disposes himself for by the constant practice of works of sublime charity and of renunciation of all that could be an obstacle to charity. Thus the religious state is the state of perfection; not that religious are supposed to be already perfect, but because perfection of Christian charity is the end aimed at, and suitable means are furnished therein for obtaining that end.

2. The special obligations under which a religious lies follow from the nature of the religious state which we have described. Inasmuch as he devotes himself to the perpetual service of God in religion, he must do nothing that would endanger his perseverance or cause him to be dismissed from the order. He is especially bound to observe his vows of poverty, chastity, and obedience, which he has voluntarily made to God, and in which the

[1] Motu Proprio, July 16, 1906.

essence of religious life and the chief means of practising perfection consist. He is bound to keep the rule which he takes for his guide in life by the very fact of entering into the order which he has chosen. The obligation imposed by the rule is not the same in all religious orders. In some it binds under sin like the precepts of the superior. The rules of the Dominicans, Jesuits, and of most of the modern congregations, of themselves, speaking generally, do not bind under sin. Particular precepts are sometimes inserted in the rule, and these of course are to be observed under sin like any other precepts of obedience. Apart from these the rule is rather a guide of conduct in religious life, and an indication as to how the superior should govern his subjects, than a rigid code of law binding under pain of sin. However, divines point out that frequently violations of such a rule will be sinful, not precisely because they are infractions of the rule, but because there will frequently be something defective in them as moral acts. If the silence which the rule prescribes is broken without just cause, the act will be sinful on account of the motive which led to it, the scandal which it causes, and its tendency to loosen the bonds of religious discipline. Formal contempt of the rule, by which a religious refuses to be guided by it, and wishes to show his independence, is mortally sinful, because it is directly contrary to his religious profession.

CHAPTER II

ON ENTRANCE INTO RELIGION

1. Our Lord Jesus Christ proposed the counsels of perfection to all his followers in general: "He who can take, let him take it"; "If thou wilt be perfect." When, however, we consider particular cases, we see that many are debarred as a matter of fact from embracing the religious state. Many find themselves in a fixed position in life with duties to be performed towards parents, relations, and others, which will not allow of their abandoning the world. Many more are unsuitable by character and temperament for the religious life. None of these can properly be said to have a divine call to the religious state, for when God gives a call he provides the necessary means for following it. There are others whom God calls in wonderful and different ways, making known His will to them sometimes in an extraordinary manner, more often by slowly developed inclinations and desires to forsake all and give themselves to Him. The question arises whether such a divine vocation is a necessary condition for lawfully entering into religion, and whether one who felt himself called would sin if he neglected to follow the call.

Any one who is free and who wishes to enter religion to be able to do more good, or to save his soul with greater security, is in fact called by God, for such desires are

special graces given by God, and so they are signs of a divine vocation. So that all who have the aptitude, are free, and are led to religion by supernatural motives of some sort, are divinely called by God. One who entered religion from merely natural motives would probably soon find that he had made a mistake, and would return to the world. However, if such a one chose to rectify his intention and remained in religion to do good and to save his soul, he would not commit sin. He embraces a more perfect state of life, and if he does what in him lies, God will give him abundant grace to live a good religious life. Of course, sin is committed by one who enters religion from merely natural motives, and does not intend to fulfil the obligations of the state into which he has intruded himself. One who is called to religion and prefers to remain in the world acts very foolishly, throws away a great grace, and may expose his salvation to great danger. If such a one is persuaded that he cannot save his soul in the world, he commits grave sin by not taking the necessary means to secure his eternal salvation. If, however, he hopes with God's grace (which will not be wanting to him) to lead a good life in the world, he will not commit sin by not following the divine call; for this is a counsel, not a command, and counsels do not bind under sin. Some divines disagree with the foregoing doctrine, but it is supported by the authority of St. Thomas and many approved authors.

2. As, therefore, the observance of the counsels is not only lawful but a more perfect state of life, any one may enter into religion who is not prevented by some obstacle. Those who have not possession of their faculties, and children who have not arrived at the age of puberty, and

are still subject to their parents, cannot enter into religion. In former times parents used occasionally to present their children to be brought up in monasteries with the intention of their becoming religious when they reached the proper age. This custom, however, has long been abandoned. Children whose parents stand in need of their help, and who would be reduced to grave necessity if their children entered religion, must remain in the world as long as their parents need their assistance. Natural piety requires this.

One who has consummated a valid marriage cannot enter the religious state without the free consent of the other party. If the marriage has not yet been consummated, or if the other party has lost his marital rights by adultery, heresy, or other crime, one who is married may enter religion, and when he takes solemn vows the non-consummated marriage is dissolved by ecclesiastical law.

Those who have contracted debts owing in justice to known creditors may not be admitted into a religious order if there is reasonable hope of their being able to discharge their obligations within a short period. Sixtus V and Clement VIII forbade religious orders to receive men who through their own fault had become burdened with heavy debts. There are usually special provisions made about the reception of debtors in the constitutions of the several orders.

A Bishop with ordinary jurisdiction and the cure of souls cannot enter into religion without first obtaining the leave of the Holy See, by whose authority he can be released from the obligations which he has contracted towards his diocese.

Clerics, even those who have been educated in a diocesan

seminary for the secular priesthood, and even parish priests, may enter into religion. Parish priests, however, are bound to notify their wish to enter religion to the Bishop, in order that he may provide, and see whether the necessities of the diocese will allow the parish priest to execute his pious wish. Those who have been ordained on the title of the mission and are bound by the missionary oath may not enter religion without the leave of the Holy See.

3. Girls may not take the habit of religion before they have completed their fifteenth year, and before doing so they must be examined by the Bishop or by some one deputed by him as to whether they know the grave character of the step they are about to take, and whether they are acting of their own free and unfettered will. Boys may enter religion after attaining the age of puberty. They cannot, however, be lawfully admitted into any order or congregation before the superiors thereof have received from the Ordinaries of their place of birth and of any place where they have lived for more than a year after attaining their fifteenth year testimonial letters bearing witness to their having the qualifications necessary for entering religion.[1] By the common law a full uninterrupted year of probation must be spent by the candidate for religion in the house of the novitiate and in the habit of the order. Although the novice has not yet taken the vows of religion, yet he is subject to the authority of the superiors of the order and is bound to obey them. By the common law the novice may not make the renunciation of his property until within two months of his profession of solemn vows, and such renunciation has no effect unless solemn profession follows.

[1] S.C. super Stat. Reg., January 25, 1848.

CHAPTER III

ON RELIGIOUS PROFESSION

1. PROFESSION is the promise lawfully made and accepted by which a religious binds himself to observe the vows of poverty, chastity, and obedience, according to the constitutions of his order.

If used in the strict sense, the words *profession, professed,* imply the taking of solemn vows; the terms are, however, used in a wider sense of simple vows. In order that the profession may be valid, the subject who takes the vows must have fulfilled all the requisite conditions; his consent must be freely given with the intention of making his profession and not vitiated by fraud, mistake, or fear; and it must be duly accepted by the proper superior in the name of the Church and of the order.

The necessary conditions on the part of the subject are that he should have completed his sixteenth year; that he should have spent a full year in the novitiate; that he should labor under no impediment which according to the constitutions of the order is substantial. Before the profession of solemn vows it is now required both in orders of men and women that the religious should have passed three years after the novitiate under simple vows.

2. Religious profession cannot be impugned as invalid after the lapse of five years from the date of profession.

Within the five years it may be impugned on good grounds, but two concordant sentences of nullity are required before the religious is free to leave his order. By the common law a solemnly professed religious cannot be dismissed from the order except for a grave crime, which he will not correct, lawfully proved by judicial process. One who has taken only simple vows may be dismissed more easily, and in this case, but not in that of solemn vows, the obligation of the vows is removed by dismissal.

CHAPTER IV

ON RELIGIOUS POVERTY

1. POVERTY in general is the want of temporal goods that have a money value. It is not a virtue of itself but rather a physical defect, for a suitable provision of temporal goods is very useful and necessary for men to lead a decent life. Poor human nature, however, is inclined to attach itself too much to wealth, and for the sake of wealth to forget why man was created by God and placed in this world. Jesus Christ taught that detachment from worldly possessions was a necessary condition for being his disciple: "Every one of you that doth not renounce all that he possesseth, cannot be My disciple."[1] And for such as were not content to follow Him in the ordinary way of the observance of the Commandments, but aimed at perfection, He proposed not only detachment from wealth or spiritual poverty, but actual poverty, the actual renunciation of wealth for His sake in order to imitate Him more closely: "If thou wilt be perfect, go, sell what thou hast, and give to the poor, and thou shalt have treasure in heaven; and come, follow Me."[2] Hence voluntary poverty in imitation of Jesus Christ is the foundation of the religious state. Voluntary poverty, however, does not constitute the essence of religious perfection; all Christian

[1] Luke xiv. 33. [2] Matt. xix. 21.

perfection consists in charity, to which poverty is but a means. Hence there is not an absolute and uniform standard of religious poverty, but it varies with the different ends which religious orders propose to themselves. Indeed, religious poverty is personal; it is the voluntary renunciation of personal and individual wealth, so that the love of wealth may not be an obstacle to the perfect following of Christ. Its essence consists in the renunciation of personal and independent ownership and use of property, for this it is which constitutes a snare for men's affections and a hindrance to perfection. So that religious poverty does not of itself prevent property being owned in common by religious, and if the end for which an order was founded requires it, there is nothing to prevent it having large possessions in common, provided that the individual religious practises poverty, and is imbued with its spirit.

The effects of the vow of poverty depend to a great extent on the rules and constitutions of the various religious orders and on the positive law of the Church. The chief distinction is that between solemn and simple vows of poverty, due to positive ecclesiastical law. The legal effects of a solemn vow of poverty are to render the religious incapable of individual and personal ownership of any property that has money value. So that after taking a solemn vow of poverty the religious cannot own any property in his own personal right. As a member of a religious community he may be a joint owner of vast possessions, but individually he is incapable of having anything as his own.

Ownership may be absolute or qualified. Absolute ownership is the moral right to dispose of property and of all its uses for one's own advantage. Qualified owner-

ship is the right to dispose of the property or of its uses for one's own advantage. Divines call the qualified ownership of the thing itself direct ownership, and the qualified ownership of its uses they call indirect ownership. A religious, even though solemnly professed, retains his personal rights to life, good name, and honor; he can still dispose of his personal actions, such as the celebration of Mass, and such personal rights as that of presenting to a benefice; he may own a relic and dispose of it by gift, for it has no money value. As a solemnly professed religious is incapable of owning property in his own right, so he cannot acquire it for himself; whatever he gains by his labor, or whatever comes to him by gift or inheritance, becomes the property of the community to which he belongs; "whatever a monk acquires he acquires not for himself, but for his monastery," as the old adage had it. By the special constitutions of their respective orders Capuchins, Observantines, and professed Jesuits cannot take property, even in the name and for the benefit of the community to which they belong, if it come to them by any hereditary title or by operation of law; property which would have thus come to them had they not been religious goes to the next of kin. They may, however, take gifts and legacies, and these become the property of their communities.

The simple vow of poverty does not deprive the religious of the direct, but of the indirect, ownership of property; so that he cannot lawfully use or dispose of anything that has a money value without the leave of his superior. Notwithstanding, then, the simple vow of poverty, religious retain the direct ownership of all the property that they had before profession, and of all that comes to them after-

wards by any legal title or gift. Indeed, they are forbidden to deprive themselves of this direct ownership before profession of perpetual vows or afterwards without the leave of the Holy See. They should, however, according to the mind of the Church, make a will before their first profession disposing of their property in the event of death, and they may not retain the administration, use, or income of their property, but they should dispose of all these before profession in any manner they judge fit, and if they choose, in favor of their order. In case of dismissal from the order their property reverts to them. After profession they cannot change their disposal of the administration, use, and income of their property, without the leave of the superior general. Whatever a religious acquires by his labor while in the institute belongs to the community. Within the limits indicated above, a religious, with the leave of his superior, may lawfully use and dispose of property. In order to justify such use and to excuse it from sin against the vow, the presumed leave of the superior is sufficient, which consists in a reasonably founded judgment that the act contemplated is not against the superior's wish. Much more will the actual, virtual, or tacit leave of the superior excuse an act of ownership on the part of a religious and prevent it from being a violation of the vow.

2. Sins against poverty are grievous if the matter be considerable. The measure as to what matter is considerable is the same here as in theft, for just as the sin of theft consists in taking away the property of another against his reasonable wish, so a sin against religious poverty consists in the use, disposal, or acceptance of property contrary to one's promise to God and the wish of religious superiors. The absolute sum which is necessary and suffi-

cient for a mortal sin against the vow in all cases will be one pound sterling, and less will be sufficient if the community whose property is used or disposed of without leave is poor. Divines, however, allow that a moderately rich monastery may be considered in this matter as equivalent to an absolutely rich individual proprietor.

3. In some orders it was customary for the religious to have money, books, eatables, for their own use, and such allowance was called the *peculium* of the religious. Such a practice is against the purity of religious poverty, and it was forbidden by the Council of Trent, as well as by several Roman Pontiffs. Indeed, if it was understood that subjects had the right to use and dispose of the peculium as they pleased, in perfect independence of the will of their superior, it would be against the very essence of religious poverty. In many orders the custom is still sanctioned, of having a peculium in more or less dependence on the will of the superior.

It is not against poverty to administer money in the name of another, for such administration is not an act of ownership. A religious may then act as the almoner of another, but he must not distribute alms in his own name as if the money were his own. To keep a deposit of money with the obligation in justice of accounting for it is against religious poverty.

CHAPTER V

THE VOW OF CHASTITY

1. The Catholic Church, following the teaching and example of Our Lord and of St. Paul, esteems very highly the beautiful virtue of chastity. According to her teaching, the state of marriage is indeed good, and Jesus Christ raised marriage to the dignity of a sacrament, but the state of virginity is better. For such as wish to follow Jesus Christ more closely and to dedicate themselves wholly to God, celibacy and absolute chastity are proposed as a counsel of perfection. There is no fear that the number who embrace this counsel will ever be so great as to seriously interfere with the proper increase of the population. There will always be a sufficient number left in the world to enter upon the married state. Nor is the heroic renunciation of the pleasures of married life made by religious lost upon the world. As long as there are numbers of men and women to be seen who for love of God and chastity lead solitary lives, it should be more easy for people in the world to curb their fleshly appetites so as to keep within the bounds of reason and virtue.

By the vow of chastity the religious promises Almighty God that he will altogether abstain from all venereal pleasure, whether of thought or deed. In consequence he is bound to observe perfect chastity of body and mind,

so that any act which he commits contrary thereto will be a double sin, against the virtue and against his vow. We saw when treating of the Sixth Commandment that sins by which venereal pleasure is directly sought or consented to are always grave, and so, when such sins are committed by religious, their grievous malice will be twofold.

2. One who has taken a solemn vow of chastity is incapable of contracting a valid marriage by the law of the Church, and *a fortiori* he cannot enter on valid espousals. A marriage contracted and consummated before the taking of a solemn vow of chastity remains valid, but by ecclesiastical law a marriage which has not been consummated is dissolved by solemn vows taken in a religious order. A simple vow of chastity never annuls a previous marriage, but it makes the use of marital rights unlawful. It is a disputed point as to whether a simple vow annuls previous espousals. A simple vow of chastity certainly makes subsequent espousals invalid, as being an unlawful promise, and it renders subsequent marriage unlawful though not invalid, except the simple vow made in the Society of Jesus, which is a diriment impediment to marriage by a special privilege of the Holy See.

3. In order to safeguard the chastity of religious, and to enable them to lead more quiet and tranquil lives, the law of enclosure has been introduced. The enclosure in a religious house is all the space within which the religious may move freely, but which they may not leave without the required permission, and to which others are denied access. In some communities of simple vows the enclosure is merely of rule, but the Bishop has the power of imposing on nuns, even on those whose constitutions have been ap-

proved by Rome, the episcopal enclosure, and of making it obligatory under pain of censure. All religious who take solemn vows are subject to the laws of papal enclosure, which are more strict for orders of women than for orders of men.

The Constitution *Apostolicæ Sedis* of Pius IX briefly summarizes the law of enclosure. It imposes the penalty of excommunication reserved to the Holy See on "all who violate the enclosure of nuns, of whatever rank or condition, sex or age, they may be, by entering into their convents without the lawful permission; and in the same way those who introduce or admit them; and also nuns who leave the enclosure without a just cause approved by the Bishop according to the Constitution *Decori* of Pius V." In spite of the general terms of this prohibition those of royal dignity are not comprised in it, and under special conditions the Bishop, the regular superior, the confessor, the doctor, and workmen for necessary work may enter. Nor does the censure affect children who have not attained the use of reason.

The same Constitution of Pius IX imposes the same penalty on "women who violate the enclosure of religious men, and on superiors or others who admit them."

Here again ladies of royal birth are excepted, and girls who have not reached adult age do not incur the censure.

No excommunication is incurred by religious men if they leave the enclosure without permission. Herein lies the chief difference between the law of enclosure as it affects religious men and religious women. Moreover, men and boys may enter monasteries of men. Still, partly by the law of the Church, partly by rule and the nature of religious obedience, religious men may not leave the

enclosure without the permission of the superior and without a companion. Unlawful departure from the enclosure is specially forbidden at night, which, indeed, is a reserved case in many orders, and therefore a grievous sin.

CHAPTER VI

THE VOW OF OBEDIENCE

1. Men of the world find it difficult to understand how one man can surrender his liberty and bind himself by vow to obey another. And yet this counsel of perfection, too, is contained in the life and teaching of the divine Founder of the Church. He did not intend that all the members of His Church should be equal; He placed some in authority over the others, and He gave them power to teach, instruct, correct, and guide those who were subject to them. He therefore laid a duty of obedience to spiritual rulers on all the faithful. Those who were content to observe the Commandments were bound only to obey such positive precepts as the rulers of the Church judged it expedient to impose on all Christians; but those who aimed at perfection became as a consequence subject to the teaching and authoritative guidance of their rulers in matters which pertain to perfection as well. Those who were content with observing the Commandments reserved some liberty for themselves; those who aimed at Christian perfection gave themselves wholly to obedience after the example of Him who was obedient even unto death. The prelates of the Church are therefore the superiors of religious men and women, and even if some are exempt in some matters from the jurisdiction of the ordinaries, all are subject to the Pope,

not only as the Supreme Head of the Church on earth, but as their highest religious superior.[1] In approving of a religious order or congregation the Pope and the Bishops delegate the necessary authority to the lawful superiors of the order, and give them power to command their subjects in all that pertains to the observance of the rule.

A religious, therefore, who takes a vow of obedience binds himself thereby to obey all the precepts which his superiors lay upon him according to the rule of the order.

In order, then, that the obligation of the vow may become operative, a precept must be given by the superior. And here we must distinguish between the vow and the virtue of obedience. The virtue of obedience inclines to the most perfect conformity of will and judgment of the subject with the will and judgment of the superior. A subject who has the virtue of obedience will strive to execute the known will of his superior without waiting for a strict command. The obligation of the vow is not so extensive as the virtue of obedience. The vow will be saved if precepts are externally executed, for, according to the more common opinion, the vow of obedience does not extend to merely internal acts.

The superior's authority is limited and defined by the rule, and so the subject is only bound to obey such commands of the superior as are sanctioned by the rule directly or indirectly. It is not, however, necessary that the precept should be expressly sanctioned by the rule in order to enable a superior to impose it with authority; it is sufficient if it be implicitly and indirectly sanctioned, as it will be if its imposition conduces to the better and more perfect observance of the rule.

[1] St. Thomas, 2–2, q. 186, a. 5.

2. Violations of the vow of obedience are grave sins of themselves. However, in practice, sins of religious against obedience are seldom mortal for want of sufficiently grave matter, or because the superior does not intend to impose a grave precept. Such sins will be mortal when in grave matter the superior commands anything to be done in virtue of obedience, or when serious harm follows from disobedience, or when a subject refuses to obey from formal contempt of authority, wishing to exercise and display his independence.

When the vow of obedience is violated, there is a double malice in the sin. Such a violation is a sin against the vow, and thus it is a sacrilege; and it is also a sin against the Fourth Commandment of the Decalogue which prescribes obedience to be rendered to all lawful superiors. Such lawful superiors are armed with spiritual jurisdiction delegated to them by ecclesiastical authority, or at least they have the natural authority which belongs to all rulers of a community, great or small. Superioresses of nuns have this natural authority, and so they can impose even grave precepts of obedience on their subjects, although as women they cannot have ecclesiastical jurisdiction.

3. Some theologians, following the analogy of the other two vows, teach that there is a great difference between the solemn and the simple vow of obedience. The solemn vow, according to them, renders a religious altogether incapable of undertaking valid obligations without the consent of his superior, while the simple vow only makes such obligations rescindable at the will of the superior, but does not make them null and void. The solemn vow is certainly a stricter and more durable bond between the religious and his order, from which he is dispensed rarely and with great difficulty;

but besides this difference no other can with certainty be deduced from ecclesiastical law or from the nature of the vows. The better opinion is that the effects of the solemn vow of obedience are the same as those of the simple vow, except as regards its greater permanence and force.

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